1957.
K
Examined

File No. S. Dhwar 8/51

Legal DEPARTMENT
E BRANCH

Subject:— Suits: Dharwar.

In the Court of the Civil Judge (S.D.), Dharwar.
Civil Suit No. 498 of 1950

Sangappa Neelappa Nimbannavar Plff.

Vs.

The State of Bombay — Defts.

P.77 (2)

S. Dhwar. 8/51.

File No.

Std. Sectt. Slip 24-B

Dharwar Civil Suit No 498-1950 —17—

The plff has filed this suit for a declaration that certain orders passed by the Commissioner S.D. and by the Govt of Bombay relating to the deserted Gavthan site of the village Parwapur were illegal , void and ultra vires. He also prayed for the consequential relief of Injunction to restrain the Govt from interfering with his possession.

The Village Paravapur was deserted by its inhabitants about 30 years ago and the Gavthan land formerly occupied by the huts of the villages was lying vacant. The Collector took possession of the same in 1944 without any inquiry under Sect 37 Land Revenue Code. The Gavthan site measured about 10 acres. It was sold by auction to the plff in 1945 and he was put in possession after he had passed a Kabulayat to the Govt.

Later on the Govt took the view that the land could not be declared to vest in Govt without an inquiry under Sect 37 . The auction sale in plffs favour was therefore cancelled by the Commissioner under Sect 211 L.R.C. and the Prant Officer was asked to hold an inquiry into the ownership of the land under Sect 37 .As a result of that inquiry the land was declared to vest in the Govt. The Govt then decided to divide the land into plots and then to sell away those plots. For that purpose it was necessary to evict the plff from the land purchased by him in the auction sale . A Notice of eviction was served on him by the Mamlatdar under Sect 202 L.R.C. The plff then filed the present suit for the above reliefs.

The suit is defensible. An inquiry under sect 37 is necessary before any land claimed by the Crown could be declared to vest in the Crown. The former sale held by the Collector without making such an inquiry was irregular and was properly set aside by the Commissioner. The plff had also supported the position that the land belonged to the Govt and he opposed the claims of the other claimants. The plff also passed temporary Kabulayats of the land to the Mamlatdar and agreed to give vacant possession after the crops of the year 1949-50 were removed. The plffs present suit is not therefore proper . The defence of the suit may be sanctioned on the lines of the accompanying brief.

S.V.L (Ag.C) Defence sanction accd No. 8600 dt 1-6-51
Secy. R.D. 31/5 31-5-51

No. 8635

Office of the
Remembrancer of Legal Affairs,

Bombay Castle (Bombay No.1), 1st June 1951.

Subject:- Dharwar Civil Suit No. 498 of 1950.

MEMORANDUM.

The District Government Pleader, Dharwar, is informed that the defence of the suit noted above is sanctioned and he is requested to conduct the same on the lines of the brief a typed copy of which is sent herewith in advance.

He is further requested to prepare and file a written statement on the lines of the above brief and send a copy of the same to this office.

The papers of the case received from the Collector along with the copy of the opinion of the Attorney General accompany.

X being sent separately

sent on 2/6 Submitted to sign. O/C

For Remembrancer of Legal Affairs.

To 1/6 A-Soh for 1/6.

KC.1.6.51. The District Government Pleader, Dharwar.

Issued 1/6

GR.LDNO.9128 of 9-6-52
sent to the Hero
of 14/6

VD

No.657 dated 18 July '51,
Office of the Dist Govt Pleader,
Dharwar.

To

The Rememrancer of Legal Affairs,

Bombay.

Sub :- L.C.Suit No.498 of 1950 on the file of the Civil Judge, S.D., Dharwar.

Sir,

With reference to your Memo No.8635 dated 1st June '51, I have the honour to send herewith a copy of written statement filed in the above suit on 4th July '51. The papers of the case & the opinion of the Attorney General, referred to in the memo may please be sent early.

Yours faithfully,

Dist. Govt. Pleader.

L D. 21 JUL 1951

HIGH COURT SECRETARIAT
LEGAL DEPARTMENT
15266
E/23.7.51

Long Cause Civil Suit No.498/50.

In the Court of the Civil Judge, Senior Division,
at Dharwar.

Plaintiff :- Sangappa Neelappa Nimbannavar.

Versus.

Defendant :- The State of Bombay.

In this, the defendant begs to submit his written statement as under :-

1. Plaintiff's suit is not tenable under the law.

2. The Collector wrongly decidéd on 16-12-1944 without holding an enquiry as required by section 37(2) of the Land Revenue Code that the Gavthana should be taken possession of as Government waste land. Accordingly possession was taken and thereafter the land was sold by public auction to the plaintiff who happened to be the highest bidder. The order of the Collector for taking over possession without enquiry under section 37(2) of the Land Revenue Code was illegal and so too the subsequent order for disposal. The Commissioner was therefore perfectly within his rights when he cancelled the Collector's order dated 16-12-1944 taking possession of the abandoned village site as well as the Prant Officer's order dated 8-8-1945 disposing of the land out of that village site, to the plaintiff, and when he directed the Collector to hold an enquiry under section 37(2) of the Land Revenue Code on 17-2-1948. The order of the Commissioner is legal, valid and intra vires and was passed under section 211 of the L.R.Code.

3. Facts stated in para 3 of the plaint are not admitted. This defendant also does admit that plaintiff

spent Rs.2500/- for the cultivation of the suit land. The plaintiff himself should prove these facts.

4. It is denied that section 211 of the Bombay Land Revenue Code is not applicable ~~to~~ in case of completed agreements as it is in this case. The agreement dated 24-8-1945 is void in as mu h as it was entered into in accordance with the order of the Collector which was itself void and inoperative, as the auction was in respect of land which had not been held or declared to be of the ownership of the Government.

5. The sale in favour of the plaintiff was set aside by the Commissioner under section 211 Land Revenue Code by an order dated 17-2-1948. The plaintiff was informed about that order. He did not file any appeal, nor did he file a suit within one year from the date of the order. The plaintiff's suit filed more than a year after the date of the order is barred by limitation under article 14 of the Limitation Act.

6. The relief which the plaintiff seeks in this suit is inconsistent with the order of the Commissioner dated 17-2-48 and it involves the setting aside of that order. The suit is therefore not tenable.

7. The plaintiff's suit is also barred under section 37(3) of the Land Revenue Code. The order of th Prant Officer was passed on 21-8-1948 and the plaintiff did not file the suit within one year from the date of that order. The Plain iff had due notice of the enquiry and he had taken part in the proceedings before the said order was passed.

8. The plaintiff's contention that no formal enquiry under section 37(2) of the Land Revenue Code was necessary in the case of an abandoned village site and that such a site autho-matically vests in the Government is not correct. An abandoned village site cannot automatically vest in the Government. The auction sale in favour of the plaintiff was therefore set aside by the Commissioner on 17-2-1948. The plaintiff did not question or challange that order of the cancellation of the sale. The

plaintiff had also supported the Government in the later inquiry and contended that the land belonged to the Government and that no part of it belonged to the other 11 claimants.

9. It is not admitted that under the principle of feeding the estoppel, the plaintiff has a right to enjoy the property under the same terms as contained in the agreement dated 24-8-1945 in as much as the said agreement is void and illegal. The principle of feeding the estoppel cannot be invoked to defeat the plain provisions of an act of Legislature. The provisions of sections of 43 of the T.P.Act does not apply. Further revenue auction sales of Government lands are not also governed by the provisions of the T.P.Act at all.

10. The plaintiff is estopped from questioning the ownership of the Government with reference to the suit land. After the sale in favour of the plaintiff had been cancelled by the Commissioner the plaintiff supported the case for the Government that the land vested in the Government and he opposed the claims of the 11 persons. On 8-6-1949 the plaintiff filed an application to the Mamlatdar praying for permission to cultivate a portion of 5 acres out of the disputed land for the year 1949-50 and declaring that he had no objection if the work of laying out plots is carried on immediately, in the remaining 4 acres. On the same day he also passed a rent note in favour of the Mamlatdar and agreed to deliver possession of the 6 acres of to the Government after the crops of the year 1949-50 had been removed. He also agreed to obstruct the work of laying out plots in that portion of 6 acres thereafter. The plaintiff had made similar requests and given similar undertakings to the Prant Officer on 5-12-1949 and to the Commissioner on 29.7-1949. He also prayed that two

plots out of the area may be sold to him. The plaintiff had thus by his conduct and by his representations admitted and accepted the Government ownership of the suit land.

11. The order of the Commissioner dated 8-2-1948 and 27-12-1948 and the order of the Government of 19-10-1949 are legal, valid, and intra vires. A notice issued for eviction of the plaintiff under section 202 of the Bombay Land Revenue Code is also valid and legal. The plaintiff is legally bound by these orders and is liable to be evicted from the suit site. He has therefore no cause of action to file this suit.

12. The Commissioner has already passed an order that if it is proved to the satisfaction of the Collector that the plaintiff had suffered a loss by the cancellation of the sale in his favour then proper compensation may be paid to him out of the sale proceeds of the new plots. The plaintiff has therefore no ground for any grievance on account of the cancellation of the sale in his favour.

For all xxxx these reasons the plaintiffs suit should be dismissed with costs.

4th July '51. Sd/- R.V.Jathar,
Asstt. Govt. Pleader.

I, R V.Jathar, Assistant Government Pleader, Dharwar, do hereby on solemn affirmation state that what is contained above in paras 1 to 11 are true to the information received and believed to be correct.

4th July '51. Sd/- R.V.Jathar,
Asstt. Govt. Pleader.

11.—27.

No. 11862

Legal Department,

Bombay Castle (Bombay No.1), 25th July 1951.

Subject:- L. C. suit No. 498 of 1950 on the file of the Civil Judge (Senior Division), Dharwar.

MEMORANDUM.

With reference to his letter No. 657, dated the 18th July 1951, on the subject noted above, the District Government Pleader, Dharwar, is informed that the papers of the case received from the Collector along with the copy of the opinion of the Attorney General were forwarded to him separately under Registered parcel on 2nd June 1951. This office holds a Postal receipt No. 839, dated the 2nd June 1951. The District Government Pleader, Dharwar, is therefore requested to make a thorough search in his office for the papers and report the result within a week.

Issue 25/7.

Subd. for signature.

O.C.

For Remembrancer of Legal Affairs.

C. 25.7.51. To The District Government Pleader, Dharwar.

13

31

Suits:

Dharwar.

For a declaration that certain orders passed by the Commissioner, Southern Division and by Government of Bombay relating to the deserted Gavthan site of the village of Paravapur were illegal, void and *ultra vires*.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 9128.

Bombay Castle, 9th June 1951.

Letter from the Collector of Dharwar, No. L.A.W. 520, dated 31st October 1950—Forwarding the papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), DHARWAR.

CIVIL SUIT NO. 498 OF 1950.

Sangappa Neelappa Nimbannavar... ... ... Plaintiff;

versus

The State of Bombay ... ... Defendant.

Memorandum to the District Government Pleader, Dharwar, No. 8635, dated the 1st June 1951—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original for { J. R. DHURANDHAR,
Secretary to Government.

G. R. No. 9128, L. D., dated the 9th June 1951.

To

*The Revenue Department,
*The Collector of Dharwar,
The District Government Pleader, Dharwar (with two copies of the brief).

*With a copy of the brief.

No. of 1951.

Copy forwarded for information and guidance to

15
33

DHARWAR CIVIL SUIT NO. 498 OF 1950.

Chronological Statement of Facts.

The plaintiff has filed this suit for a declaration that the order passed by the Commissioner, Southern Division, on 8th February 1948, cancelling the previous order of the Collector, dated 16th December 1944, was illegal and void. The plaintiff also prays for a declaration that the order passed by the Commissioner on 27th December 1948 directing that the suit lands may be divided into suitable building plots and then sold away was void. The plaintiff further prays for a declaration that the order passed by the Government on 19th October 1949 confirming the decision of the Commissioner, Southern Division, was illegal and void. The plaintiff also prays for an injunction to restrain the defendant from evicting the plaintiff from the suit lands. The plaintiff prays in the alternative for possession if he was evicted from the suit lands during the pendency of the suit. The plaintiff also prays for damages if he cannot be restored to possession for any reason.

The dispute relates to the Gavthan land of the village Parvapur, taluka Kalghatgi, district Dharwar. It seems that about 25 to 30 years ago the village was abandoned by the residents who all went to live elsewhere. The result was that the Gavthan lands formerly occupied by the huts of the residents was left vacant. But the agricultural land of the village was being cultivated all the while by their owners who lived in neighbouring villages. The area of the Gavthan land so abandoned was about 10 acres.

In 1939 one Abdul Kadar had applied to the Government for the grant of an area of 5 gunthas from the Gavthan land to him for building a house. That application was rejected on 31st January 1940 by the Collector. On 27th February 1944 the Assistant Collector made a proposal that an inquiry should be held under section 37, Land Revenue Code, as regards the ownership of the abandoned Gavthan land. But the Collector, relying upon some opinion expressed in Gupte's Land Revenue Code, decided that abandoned village sites automatically vested in the Government. He therefore directed that the abandoned Gavthan land should be taken possession of by the Government, and then it should be disposed of by auction as Government Waste land. The Circle Inspector accordingly took possession on 24th February 1945. Thereafter the entire area of the Gavthan land was put to auction sale. It was purchased by the present plaintiff on 15th June 1945 for Rs. 552. The sale was duly confirmed and the plaintiff was required to pass an agreement to the Government

in Form F(*I*). The plaintiff was also put in possession in or about August 1945. Since then the plaintiff has been in possession. He alleges that he had spent vast sums of money on improving the land and bringing it under cultivation.

On 23rd January 1947 some people of the village applied to the Honourable the Revenue Minister alleging that the sale to the plaintiff was irregular, and that the Gavthan land was owned by private persons, and that it did not belong to the Government. There was an inquiry and in the end the Commissioner passed an order on 8/17th February 1948 that it was necessary to hold a formal inquiry under section 37, Land Revenue Code, before the Gavthan land could be declared to vest in the Government. He therefore proceeded under section 211 and set aside the order of the Collector dated 16th December 1944 for taking possession of the land, and the order of the Prant Officer, dated 8th August 1945, confirming the sale of the land to the plaintiff. The Commissioner further ordered that an inquiry be held under section 37, Land Revenue Code, with regard to the ownership of the abandoned Gavthan land. That inquiry was accordingly held, and the result was that the land was declared to vest in the Government. On 27th December 1948 the Commissioner further ordered that the land should be divided into suitable building plots, and that these plots should be disposed of as Government land. For that purpose it was necessary to evict the plaintiff. On 30th June 1950 the Mamlatdar issued a notice of eviction to the plaintiff under section 202 of the Land Revenue Code. In the meanwhile the plaintiff had filed an appeal to the Government from the Commissioner's order dated the 27th December 1948. The Government rejected the appeal on 19th October 1949. On 6th July 1950 the plaintiff gave notice of suit, and he filed the present suit on 7th September 1950 for the reliefs set out above.

The plaintiff's main contentions in the suit are these:—

(1) No inquiry under section 37 of the Land Revenue Code was necessary before an abandoned village site could be declared to vest in Government.

(2) The Commissioner had no power under section 211, Land Revenue Code, to set aside a grant made to the plaintiff under an agreement followed by delivery of possession.

(3) As the Government was later on declared to be the owner of the land the previous sale to the plaintiff, although it may be illegal in the beginning, became valid after it was found that the land did belong to the Government. The plaintiff has therefore acquired a good title to the land, and he cannot be evicted by the Government.

(4) The Commissioner has no power to order that the land should be divided into plots and then sold by auction.

Grounds of Defence.

The village Parawapur was deserted by its inhabitants some 30 years ago, and the village Gavthan site measuring about 10 acres remained unoccupied and vacant for a number of years. The Collector of Dharwar took the view that abandoned village sites automatically vested in the Government. Hence he ordered that the Government should take possession of the abandoned site and then the land should be disposed of as Government waste land. Accordingly the Circle Inspector took possession on 24th February 1945. Then an auction sale was held and on 15th June 1945 the entire land was sold to the present plaintiff who had given the highest bid for Rs. 552. The plaintiff entered into an agreement with the Government in Form F(*1*) on 24th August 1945, and then he was put in possession.

Later on the Commissioner, Southern Division, came to the conclusion that abandoned village sites did not automatically vest in the Government and that an inquiry must be held first under section 37(*2*) of the Land Revenue Code. On 17th February 1948 the Commissioner set aside the sale of the land in favour of the plaintiff under section 211, Land Revenue Code, and ordered an inquiry under section 37(*2*), Land Revenue Code, as regards the claims to the lands.

That inquiry was held by the Prant Officer. Some 11 persons came forward and made a claim to specific portions of the Gavthan land. It seems that the plaintiff also appeared before the Inquiry Officer and opposed the claims of these 11 persons. On 21st August 1948 the Prant Officer held that the claims of the 11 persons were not proved and that the entire land vested in the Government. There was no appeal by any party against the decision. On 27th December 1948 the Commissioner ordered that the land should be divided into plots and the plots should be disposed of by auction sale. Against that order the present plaintiff had appealed to the Government. But his appeal was dismissed by the Government on 19th October 1949. The plaintiff then filed the present suit on 7th September 1950.

Limitation.—The sale in favour of the plaintiff was set aside by the Commissioner under section 211, Land Revenue Code, by an order dated 8/17th February 1948. The plaintiff was informed about that order. He did not file any appeal, nor did he file a suit within one year from the date of that order. The plaintiff's suit filed more than one year after the date of the order is barred by limita-

tion under Article 14 of the Limitation Act. The relief which the plaintiff seeks in this suit is inconsistent with that order, and it involves the setting aside of that order. It may perhaps be contended that the Commissioner's order was illegal, *ultra vires*, and void and hence it need not be set aside. It has been suggested in the plaint that the Commissioner had no power to set aside a grant evidenced by an agreement and followed by delivery of possession. This argument may gain some support from the decisions in 44 Bom.L.R. 405, and 46 Bom.L.R. 410. *See* also 36 Bom.L.R. 242 and 50 Bom.L.R. 524. It should be urged however that the facts of the present case are peculiar and are distinguishable. In this case there had been no inquiry under section 37(2) of the Land Revenue Code before the date of the aution sale in favour of the plaintiff. It had been wrongly assumed that an abandoned village site* unsupportable. The auction was therefore in respect of land which had not been held or declared to be of the ownership of the Government. The terms of section 211 are wide enough to enable the Commissioner to set aside such a proceeding. The view of the Bombay High Court that section 211 applies at the stage when there is only a decision or order, and that it does not apply when the decision or order is followed by a grant evidence by a Kabulayat, accompanied by delivery of possession is not final as the same point is pending before the Supreme Court in another case. (A copy of the opinion of the Attorney General on the point in dispute should be forwarded to the District Government Pleader for his information).

* automatically vested in Govt. That view was found to be -

It should be next urged that the plaintiff's suit is barred under section 37(3) of the Land Revenue Code. The Prant Officer held, after an inquiry under section 37(2), that the whole of the Gavthan land (including the site sold to the plaintiff in 1945) vested in the Government. The order of the Prant Officer was passed on 21st August 1948 and the plaintiff did not file the present suit within one year from the date of that order. The relief now claimed by the plaintiff is consistent with the order of the Prant Officer. The plaintiff had due notice of the inquiry. A notice of inquiry was served on him on 5th March 1948 (*see* page 59 of file II). He had taken part in the Proceedings. The record further shows that when the inquiry was pending the present plaintiff filed two applications before the Prant Officer, on the 26th July 1948 (page 121, file No. II) and the other on the 14th August 1948 (page 135 of the same file). By the former he applied for permission to be present in the inquiry proceedings and by the latter his pleader applied for time to produce certain documents and records. It seems that the plaintiff and his pleader were allowed to take part in the inquiry. The plaintiff supported the Government and opposed the claims set up by the 11 applicants. The plaintiff had therefore notice of the inquiry and of the order passed therein. His suit filed more than one year

after the date of the order in the inquiry is clearly barred under section 37(*3*) of the Land Revenue Code.

The plaintiff's next contention is that no formal inquiry under section 37(*2*) of the Land Revenue Code was necessary in the case of an abandoned village site and that such a site automatically vests in the Government. Hence the Government had the right to put it to auction sale, and the sale held in his favour was valid and good. The plaintiff relied on a Resolution of the Revenue Department for the view that abandoned villages sites vested in Government. (G. R., R. D., No. 8413, dated the 27th May 1907). This Resolution does not seem to be conclusive on the point. Whether an inquiry under section 37 is necessary or not would depend on the circumstances. Under section 37(*1*) all lands, sites, river beds, etc. belong to Government unless it is proved that they belong to a private person. Under clause (*2*) of the same section when any property is claimed by the Crown as against an Individual or by an individual as against the Crown it shall be lawful for the Collector to decide the dispute after holding a formal inquiry. An abandoned village site cannot automatically vest in the Government. Obviously the site was once under occupation by the persons who later on abandoned it. If the Crown makes a claim to such a site it is possible that the claim would be opposed by the former occupants. Hence an inquiry would be necessary before the land could be declared to be the property of the Government. The Collector of Dharwar acted irregularly in taking possession of the land in 1945 without a formal inquiry and in disposing of the land by auction in favour of the plaintiff on 15th June 1945. The auction sale was therefore liable to be set aside by the Higher Revenue Authorities under section 211, Land Revenue Code. The sale was set aside accordingly by the Commissioner on 17th February 1948. The plaintiff did not question or challenge that order of cancellation of the sale. On the other hand he supported the Government in the later inquiry and contended that the land belonged to the Government and that no part of it belonged to the 11 persons.

The plaintiff's next contention is that even if the Government had no title to the land at the date of the auction sale in 1945 the plaintiff's title would be complete when later on it was declared that the land belonged to the Government. In this connection reliance seems to have been placed on the principle of "feeding the estoppel" referred to in section 43 of the Transfer of Property Act. It should be contended that section 43 cannot help the plaintiff in this case. Section 43 lays down that when a person fraudulently or erroneously represents that he is authorised to transfer certain property and professes to transfer such property, for consideration, such transfer shall at the option

of the transferee operate on any interest which the transferror may acquire in such property at any time during which the contract of transfer subsists. It is arguable in this case that the Government did make an erroneous representation to the plaintiff in 1945 that it had the power to sell the property. The plaintiff has also paid consideration for the transfer. But the last requirement of the section is not fulfilled in as much as the grant of transfer no longer subsists. It had been cancelled before the property was declared to vest in the Government. For that reason the provisions of section 43 will not apply. Further it should be urged that Revenue auction sales of Government land are not governed by the provisions of the T. P. Act at all. They are governed by the Crown Grants Act (Imperial Act No. XV of 1895). Section 2 of the Crown Grants Act provides that nothing in the T. P. Act, 1882, shall apply, or be deemed ever to have applied, to any grant or other transfer of land made, or hereafter to be made, by or on behalf of Her Majesty the Queen, or by or on behalf of the Secretary of State for India in Council, or in favour of any person whatsoever; but every such grant or transfer shall be construed, and take effect as if the said Act had not been passed. Section 3 of the Act provides that all provisions, restrictions or conditions contained in such grant shall be valid and shall take effect according to their tenor, any Rule of law, statute, or enactment of the Legislature of the country, notwithstanding.

There is nothing in the terms and conditions of the auction sale of 1945 or in the Kabulayat executed by the plaintiff, to confer on him the right to claim title to the land on the ground that the Government had been declared the owner of the same after the date of the grant.

The plaintiff's contention that the Commissioner had no power to order the land to be divided into plots before it was sold out, has no substance in it. There is nothing in the Land Revenue Code which would prevent the Commissioner from passing an order for developing the land by dividing it into plots before it is put to auction sale.

It should be next urged that the plaintiff is estopped from questioning the ownership of the Government with reference to the suit land. After the sale in favour of the plaintiff had been cancelled by the Commissioner the plaintiff supported the case for the Government that the land vested in the Government and he opposed the claims of the 11 persons. On 8th June 1949 the plaintiff filed an application to the Mamlatdar praying for permission to cultivate a portion of 5 acres out of the disputed land for the year 1949-50 and declaring that he had no objection if the work of laying out plots is carried on immediately in the remaining 4 acres. On the same day he also passed a rent note in favour of the Mamlatdar and

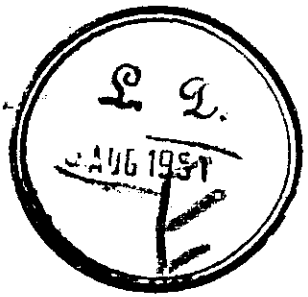
agreed to deliver possession of the 6 acres to the Government after the crops of the year 1949-50 had been removed. He also agreed not to obstruct the work of laying out plots in that portion of 6 acres thereafter. The plaintiff had made similar requests and given similar undertakings to the Prant Officer on 5th December 1949 and to the Commissioner on 29th July 1949. He also prayed that two plots out of the area may be sold to him. The plaintiff had thus by his conduct and by his representations admitted and accepted the Government-ownership of the suit land.

It should be also pointed out that the Commissioner has already passed an order that if it is proved to the satisfaction of the Collector that the plaintiff had suffered a loss by the cancellation of the sale in his favour then proper compensation may be paid to him out of the sale proceeds of the new plots. The plaintiff has therefore no ground left for any grievance on account of the cancellation of the sale in his favour.

For all these reasons it should be urged that the plaintiff's claim is untenable and that his suit should be dismissed with costs.

23 - Aug

No. 720 dated 1st July 51,
Office of the Dist Govt Pleader,
Dharwar.



To

The Registrar of Legal Affairs,

Bombay.

Sub :- L.C. Suit No.498 of 1950 on the file of the Civil Judge, Senior Division, Dharwar.

16136
E/3 8-51 sir

With reference to your Memo No.11862 dated 25-7-1951, I have the honour to inform you that the papers of the case in the above suit along with copy of the opinion of the Attorney General, have been received in this office.

Without knowing that the same were received, a line was added in the letter No.657 of 18-7-1951, to send the papers.

Yours faithfully,
Dist. Govt. Pleader.

Submitted for information

From this letter one can see how lightly the DSP has taken the matter. He has not even the courtesy to show his respect. This attitude ~~shd be~~ on the part of the DSP shd not be tolerated & he shd be told that by this writing rather irresponsibly, the whole office has got into trouble.

AC
6/8

A Loh.

As the papers have been recorded by the D.S.P. no further action appears necessary.

[illegible]
6-8.

S. Dharmaraja
Visiting
Asst
1.8.71

8/57

25 - 43

L. D.
8 FEB 1952

No. 20 dated 5 Feb '52,
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,

Bombay.

Sub :- L.C.Suit No.498 of 1950 - Dharwar.

Ref :- G.R.L.D.No.9128 dated 9th June '51.

Sir,

I have the honour to inform you that the above suit was decided in favour of Government on 23rd Jan 1952, when the following order was passed :-

" Defendant do pay plaintiff Rs.250/-. Plff shall pay additional Court fees to make up Court fees on Rs.250/- before executing the decree. Parties to bear their own costs."

An uncertified copy of judgment is herewith sent for your perusal.

Yours faithfully,

R Mujawar

i/c. Dist Govt Pleader.

THE SECRETARIAT
LEGAL DEPARTMENT
Diary No. 2832
Date No. 9/2/52
Receipt

called for information
On the whole C.S No. 498/57
decided on 23-1-1952 is
in favour of Govt.
Result may be recorded

13/2

A Solo

for
13-2

Sd. (illegible) 13-2-52

27 -6-

Copy was applied for in person on the (2nd)
Second February 1952 Cattam
Clerk of the Court.

It was ready for delivery on the (12th) twelfth
February 1952 Cattam
Clerk of the Court.

It was delivered on 19th (Nineteenth)
February 1952 Cattam
Clerk of the Court.

6400

Copy & S.C. } 20-00

Received on - 7-9-1950.

Comp. & S.C. } 5-00

Registered on - 7-9-50.

Decided on - 23-1-52.

Pafo 0-2-0

25-2-0

Duration - 2 years, 8 months & 16 days.

IN THE COURT OF THE CIVIL JUDGE SENIOR DIVISION, DHARWAR

At Dharwar. Exh. 53.

Pleaders.

Long Cause Civil Suit No. 498 of 1950.

Mr. Hiregoudar,

Sangappa Neelappa Nimbannavar of Sangedevarkop. Plaintiff.

Against.

Govt. Pleader.

The State of Bombay. Defendant.

Claim Rs. 5

For jurisdiction Rs. 8000/-

The Plaintiff sues to get an injunction issued against the state of Bombay not to enforce the orders of the Commissioner dated 8-2-1948 and 27-12-48 and that of the Bombay Government dated 19-10-1949 on the ground that they are unatuthorized, illegal and invalid and not to dis-possess plaintiff of the suit property and to get costs of suit.

2. Plaintiff's case is as follows :- The village of Parawapur in the Kalghatgi Taluka had become deserted and the Gavathan-a site of the same vested in Government and was in its possession. The suit property is 10 acres out of it. The suit property was auctioned on 15-6-1945 on behalf of Government and plaintiff was the highest bidder for Rs. 552/-. The Collector confirmed the sale on

8-8-1945 and on 24-8-1945 an agreement was entered into between plaintiff and Government about that property. But plaintiff got possession from 1-8-1945 and is holding it till this day. At the time of the auction sale, the whole of the land was uncultivable with over-growth of shrubs, Karki etc. Plaintiff removed them and brought under culti -vation 6 acres at a cost of Rs. 2500/-. But on 8-2-1948 the Commissioner ordered that it was wrong on the part of the Collector to take possession of the deserted Gavathana site without an enquiry, under Sec. 37 (2), that the order to sell it by auction sale was wrong and that the Collector should hold an enquiry. This order is ultra vires, illegal and ~~xxx~~ invalid. It does not bind plaintiff. Plaintiff was not informed nor heard before passing of the order. Any way the Commissioner had no authority to set aside the contract entered into by the Collector on behalf of Government. In the enquiry under Section 37 of the Bombay Land Revenue Code it was held that Government could take possession of the site. Yet the Commissioner ordered on 27-12-1948 to sell the lands by dividing them into plots. That order also is illegal etc. Plaintiff was not informed nor was he heard about it. It does not bind him. However, plaintiff appealed to the Bombay Government against those orders, but it was dismissed on 19-10-1949. That is also illegal etc. Defendant is estopped from disturbing Plaintiff under the principle of feeding the estoppel. On 30-6-1950, the Mamlatdar of Kalghatgi -- issued a notice that plaintiff's possession is illegal and that plaintiff should hand over possession within 7 days. So plaintiff has to file this suit. Necessary notice ~~notice~~ under Section 80 was given on 6-7-1950.

3. The Defendant by his Written statement, Ex. 20, contends as follows:- The order of the Collector to take possession on 16-12-1944 without enquiry and the subse -quent disposal were illegal and so the commissioner was within his rights to cancel those orders and to order on 17-2-1948 an enquiry under Section 37 (2). Defendant does

not admit that Plaintiff spent Rs. 2500 for the cultiva -tion of the land. Section 211 of the Land Revenue Code is applicable as the contract was void and was based on a void order as the land was not held or declared to be Govern -ment land. Plaintiff was informed of the order of 17-2-1948 but he did not go in appeal nor did he file a suit within 1 year. So this suit is barred, the relief claimed being inconsistent with that order of 17-2-1948. This suit is barred under Section 37 (3). Plaintiff had due notice of the enquiry and took part in it. Plaintiff did not file any appeal against the order of Prant Officer of 21-8-1948. The village site does not automatically vest in Government without enquiry. Plaintiff did not challenge the Commis -sioner's order of 17-2-1948 and also supported the title of Government in the later inquiry. Plaintiff cannot claim rights under the contract of 24-8-1945 under principle of feeding the estoppel, as it is void and illegal. The -- principle cannot be invoked to defeat the provisions of any Act of Legislature. Section 42 of the T.P.Act does not apply. Revenue auction sales are not governed by the T.P. Act. Plaintiff is estopped from questioning the ownership of Government, as plaintiff supported Government against his 11 claimants after his sale was cancelled. On 8-6-49, plaintiff applied to the Mamlatdar to be allowed to culti -vate 6 acres for 1949-1950 declaring that he had no -- objection to the work of laying out plots being turned out immediately in the remaining 6 acres. On the same day, he passed a rent note in favour of the Mamlatdar and agreed to deliver possession of the 6 acres after removal of crops of the year 1949-1950. He also agreed to obstruct the work of laying out plots in the 6 acres thereafter. Plaintiff gave similar undertakings to the Prant Officer on 5-12-'49, and to the Commissioner on 29-7-1949. He also prayed for sale of 2 of the plots to him. So by representations and conduct, he accepted the title of Government. All the orders and the notice for eviction under Section 202 are legal.

The Commissioner ordered that proper compensation be paid to plaintiff if he suffered a loss by cancella -tion of his sale. So he has no grievance left.

4. The issues for decision are :-

1. Is it proved that the orders of the Commissioner dated 8-2-1948, 27-12-1948 and the order of Government dated 19-10-1949 are ultra vires and illegal as alleged ?
2. Is the suit in time ?
3. Whether the Defendant is estopped from challenging Plaintiff's title to the suit property according to the principle of ' feeding the estopple ' as as alleged in para 7 of the written statement ?
4. What order ?

5. My findings are :- 1 .No.
2. Yes.
3. No, but in law he is entitled to be compensated.
4. See order below.

Reasons.

6. The facts of this case are almost admitted. The suit property measuring about 10 acres of land formed part of the Gavathana site of an abandoned village called Parwapur. The Collector ordered it to be taken in possession of Government as such and disposed of as Government Waste Land on 16-12-1944. Then it was sold by auction to the highest bidder, the Plaintiff, on 8-8-1945. Then an agreement was entered into between plaintiff and the Collector on behalf of Government on 24-8-1945. Plaintiff was put in possession on 1-8-1945 and he has brought 6 acres under cultivation (Vide R of R extract Ex.5). Subsequently under Section 211 Land Revenue Code, the Commissioner, S.D. on 16-12-1948 cancelled the order of the Collector dated 16-12-1944 to take possession of the village site and that of the

Prant Officer disposing the site to Plff dated 8-8-1945, on the ground that the Collector had not held any enquiry under Section 37 (2) before passing the order on 15-12-44 and that, therefore, the site did not vest in Government (Vide Ex. 37). The Collector was ordered to hold an enquiry under Section 37 (2) Land Revenue Code and to report the result (Vide Ex. 37.) In the enquiry thus held, the Prant Officer, came to the conclusion that it was a Gavathana site of an abandoned village and that it vested in Government (Vide Ex. 29). Then the Commissioner ordered that steps be taken to resettle the village by dividing the Gavathana site into plots and to sell them and that the present -- plaintiff's claim for restoration of the land to him did not arise in view of the cancellation of the site. So plain -tiff has filed this suit to stop Government from disposses -sing him.

7. The first attack against the orders of the Commis -sioner under Section 211 of the Land Revenue Code in -- setting aside the sale is that the Commissioner is not ~~authorised~~ authorised under that Section to set aside the sale and the subsequent contract entered into between plaintiff and the Government represented by the Collector. In support of this proposition, reliance is placed for plaintiff on " The Government of Bombay Vs. Mathuradas Laljibhai " A.I.R 1942 Bombay Page 256 and on " The Government of Bombay Vs. Ahmedabad Mills " A.I.R. 1944 Bombay Page 244. On page 244 of the latter case, the following passage appears which I quote with great respect :-

> " Under Section 211 of the Land Revenue Code, the Commissioner can in revision, call for the papers in order to satisfy himself as to the legality or propriety of any decision or order passed by, and as to the regularity of the proceedings of a subordinate Revenue Officer. But there is nothing in that Section to suggest

that the commissioner can cancel an agreement made by the Collector, not as a subordinate Officer of the Commissioner, but as Agent for the Secretary of State, and entered into by the Collector in that -- capacity, with third parties. Merely setting aside the Collector's order of 4th January 1942 would not affect the agreement founded upon that order. "

In replying to this agreement, the learned pleader for the Government urges that as the order for sale by the Collector was ab initio void, the agreement with plaintiff cannot be said to have been entered into by the Collector on behalf of the Government. The Collector's order was challenged on the ground that he had nd held any formal enquiry required under Section 37 of the Land Revenue Code before the posses -sion of the Gavathan site was taken by the Government. I do not agree that the Collector's order to take possession of the Gavathan site as Government property without formal enquiry or the subsequent order to dispose it of would be abintitio void simply because the formal enquiry contemplat -ed under Section 37 clause (2) was not held. There is nothing in paras 1 or 2 of Section 37 to say that the -- abandoned village site or for that matter any property claimed by Government does not vest in Government till the enquiry is held and decision is given under Section 37 para 2. Section 37 para 2 authorises the Collector to decide in a summary enquiry the claims by or against -- Government. That does not mean that till the enquiry is over and the decision in favour of Government is given, the Government has no rights. This section 37 para 2 does not provide like that. It does not postpone the vesting of any property in Government, if it has a right xx to it. In the same light a reference may be made to G.R. No. 8413 of 27-5-1907 which states that abandoned -- village sites vest in Government as waste land. So

I don't agree with the learned pleader for Government that the Collector's order without enquiry, that the village site vests in Government and the subsequent -- order for disposing it are ab initio void.

8. In order to avoid the application of the two cases, " The Government of Bombay Vs. Mathuradas Lalji bhai " and " The Government of Bombay Vs. Ahmedabad Mills, " the learned pleader for the Government urges that this matter is now before the Supreme Court and that, therefore, the opinion of the Bombay High Court in the two abovementioned cases should not be taken as final. But even supposing that the matter is before the Supreme Court now, it does not affect the binding nature of the High Court decision on this Court, till the Supreme Court has set aside the High Court view. So, I don't think that Government can escape those -- decisions this way. However, it is further pointed out that the decisions in the two Bombay cases referred to grants under Section 65 or 67 of the Land Revenue Code while the grant in the present case is under Section 37. The provision for the disposal of Government property under Section 37 reads as follows :-

> " It shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit. "

But the orders of the Collector under Section 65 or 67 are not subject to the orders of the Commissioner. In this connection, I may quote the observations made in " Bombay Government Vs. Ahmedabad Mills " at page 244:-

> " But there is nothing in that Section to suggest that the Commissioner can cancel an agreement made by the Collector, not as a subordinate officer of the Commissioner, but as agent for the Secretary of State, and entered into by the Collector

in that capacity, with third parties."

So the Ratio Decidendi of those cases cannot be extended to the Collector's acts under Section 37 as therein he is subordinate to the Commissioner.

9. The next point urged is that the Commissioner has not in fact, set aside the contract of 24-8-1945, though he may have set aside the order of 8-8-1945 on which it was based. Such a distinction is drawn in the case of " The Bombay Government Vs. Ahmedabad Mills ". But as I have noted therein, the Commissioner could not set aside the grant under Section 65 as the Collector was not subordinate to him in making that grant. But as already noted above, the Collector's powers of disposal under Section 37 are subject to the orders of the Commissioner and so the Collector is subordinate to the Commissioner when making a grant under this Section. Consequently, that obstacle to holding that when the basic order fails, as a necessary consequence the contract based on it must fail, does not exist in the present case. So I agree with the learned pleader for Government that the contract in the present case shall have to be taken as set aside by the Commissioner, though it is not said in so many words. It is clear from the two Bombay rulings relied on for Defendants, quoted above that the Commissioner has powers to set aside the finding without enquiry that the property vested in Government and the order of disposal. That the Commissioner's orders were so understood is clear from the further conduct of the parties. The plaintiff, at one stage, agreed to give up immediately the 4 acres which were fallow and to pass a fresh lease for 1 year for the 6 acres of lands cultivable. This shows clearly that the contract of 24-8-1945 was considered as no more in existence. So, I hold that the contract of Ex 24-8-1945, as well as the earlier orders of 16-12-1944 and 8-8-1945 were set aside by the Commissioner. There is nothing to show that the Commissioner's actions under Section 211 to set aside the orders of the Collector under Section 37

including the agreement based on them, which were passed without enquiry, were ultra vires or illegal. Consequently I hold that the orders of the Commissioner are b-inding on the plaintiff.

10. It is urged for Government that this suit is -- barred by limitqtion under Article 14 of the Indian Limi -tation Act. To meet this attack the learned pleader for the plaintiff urges that as the orders challenged are -- illegal and ultra vires of the Revenue Authorities and that therefore, the bar of Article 14 does not apply. In -- support of this contention, he relies on (i) " Laxmanrao Vs. Shrinivasrao " A.I.R. 1927 P.C. P. 217(at P. 223), (ii) " Balavant Ramachandra Natu Vs. The Secretary of State I.L.R. 29 Bom. P. 480 (at page 489) and (iii) " Malkajapa Vs. The Secretary of State " I.L.R. 36 Bomb. Page 325. In the Privy Council case, the following passage appears:-

> " In their Lordships opinion, if the order was illegal, the Plaintiff was not bound to file a suit to set it aside, but was entitled to wait until it was enforced against him, and the attempt to enforce it against him gave him a good cause of action which was admittedly within time. "

11. In ' Malkajappa Vs. The Secretary of State, ' the Collector purported to deal with land which was prima facie the property of an individual who has been in peace -ful possession thereof and not of Government, and pass -ed an order with reference thereto. It was held that he was not dealing with that land in his official capacity but that he was acting ultra vires. Consequently, Article 14 was held not to apply. So it is clear that if the orders are illegal, the article 14 will not apply as Plaintiff is not bound to sue to have them set aside.

12. But I have held above that the orders of the -- Commissioner are not illegal or ultra vires and consequentl

the case will fall under ~~xxxxx~~ Article 14 of the Indian Limitation Act. The orders are passed under Section 211 and no other limitation is provided for a relief against them. The provision made under Section 37 (3) of Land Revenue Code, even if applicable, cannot save the case from falling under Article 14 of the Indian Limitation Act. It runs thus :-

" To set aside any act or order of an officer of Government in his official capaicty, not herein otherwise expressly provided for, ----
One year ------ The date of the act or order. "

So, Article 14 will apply if no other Article in the Limitation Act applies i.e. if no other provision is ' herein' (in the Limitation Act) is made. A provi -sion in the L.R. Code is not a ' herein ' provision. The starting point under Articles 14 is the date of the order complained of and not that of the order of the final appellate authority. The orders of the Commissioner complained of in this case are of 8-2-1948 and 27-12-1948. The appeal to Government in the meanwhile does not stop running of time nor postpone the starting of it.

12. But it must be noted that the suits contemplated under Article 14 are those for setting aside the orders. No prayer for setting aside the orders is made. Plaintiff wants to have them neglected as not binding on him. It was necessary for plaintiff to sue for setting aside those orders as I have held that they bind plaintiff. If he had done so, that relief would fall under Article 14 of the Indian Limitation Act and thus the suit would be time barred. But plff has chosen not to pray for such a relief and so to the suit as framed, Article 14 will not apply, though the suit may fail as the necessary prayer to set aside the order

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is not made. Similarly, the alternative case of estoppel can be pressed though the orders are valid and are not set aside. Consequently, I think that Article 14 does not apply to the suit as framed, though I must say that the first -- prayer for injunction on the ground of the illegality of the orders is not tenable.

13. Then I turn to section 37 (3) of the Land Revenue Code. It provides that the suit must be filed within one year. Government has taken this contention in the written statement and the Section provides for applying the bar -- though not pleaded. The suits covered by this section are wider in scope than those falling under Article 14 of the Indian Limitation Act. ' Suits to set aside the orders under Section 37 (1) or (2) or those in which the relief claimed is inconsistent with the order ' fall under this Section (37 (3). In the present suit plff is claiming -- relief inconsistent with the orders and so this suit has to face the special limitation under Section 37 (3) Land Revenue Code.

14. The starting point of limitation under that -- Section is the date of the order passed under Sub Section 1 or 2 if appeals against are made within the period of limi -tation therefrom, the date of any order passed by the -- final authority. In the present case, an appeal was filed to the Government against the Commissioner's orders and it was decided on 19-10-1949 and plaintiff was informed about it on 26-10-1949 (Vide Ex. 46). There is no reason to -- suspect that the appeal was not in time and that was not urged. So the starting point under Section 37 (3) will be 26-10-1949 and this suit is within 1 year from them. So this suit is not barred under Section 37 (3).

15. A further point pressed for Government is that plaintiff is estopped from challenging the orders in view -- of his conduct. He acquiesced in the order cancelling the disposal in his favour and passed leases. He agreed to give up possession after expiry of the year of the lease and

consented to the division of the site into plots and to their disposal to others. He applied for getting two plots allotted to him. It is true that Plaintiff has done all these acts. But that is not enough to bring in the principle of -- estoppel in operation. Estoppel requires that Government would not have acted like this unless plaintiff represented to them that their action was correct. In fact Government has taken decisions and the plaintiff bowed to them under pressure and prayed for some concessions to gain time(Vide Ex. 43). In these circumstances, it cannot be said that plaintiff is responsible for these acts of Government and that he should be stopped from backing out. It is true that plaintiff help -ed Government in the enquiry under Section 37(3) by supporting Government claim that it was an abandoned village site. But this act of plaintiff cannot be construed as his admission of Government title as against his own. For as against third parties, Plaintiff had to claim through Government and so in a dispute between Government and third parties, plaintiff had to claim through Government and so in a dispute between Govern -ment and third parties claiming title in themselves, plff had to support the claim of Government. Therein, there was no question of his own title. However, it may be said that he was conscious then that the Commissioner had cancelled the -- disposal in his own favour. Beyond that, it cannot operate as estoppel. So, I reject the claim of Government for estoppel against Plaintiff.

16. In this case, after enquiry under Section 37 (2) Land Revenue Code, the claim of Government was upheld. In this connection, the learned pleader for plaintiff refers to Section 43 of the T.P.Act enunciating the principle of -- ' feeding the estoppel '. The Collector claiming the site to be Government property disposed it of. Though it is taken that Government had no title at that time, its title was declared subsequently. So it is urged that Government is -- estopped from challenging the validity of the disposal on the ground that it had no title then. The learned pleader for --

Government urges that the provisions of the T.P.Act do not apply to Crown Grants. He relies on Sections 2 and 3 of the Crown Grants Act No. XV of 1895 and (i) " Dayapras Vs. Secretary of State " (A.I.R. 1939 Allhabad Page 263) and (ii) " Secretary of State Vs. Nistarini Annie Mitter" (A.I.R. 1927 Patna Page 319).Section 3 does not apply to this case, as no section of the Transfer of Property Act is invoked to invalidate any provision of the grant. The learned pleader for plaintiff relied on Section 43 of the T.P.Act to validate the grant and not to invalidate any portion of it. But Section 2 would seem to be wider in operation. It runs as follows :-

> " Nothing in the Transfer of Property Act, 1882, contained shall apply or be deemed ever to have applied to any grant or other transfer or land or of any interest there -in hereintofore made or hereafter to be made by or on behalf of the Crown to, or in favour of, any person whom-so-ever; but every such grant and transfer shall be -- construed and take effect as if the said Act had not been passed. "

Reading the Section as a whole, I think that the provi -sions of the T.P.Act invalidating the grant or any term of it, are sought to be excluded and not those which do not invalidate them. Though the wording of the first -- clause " Nothing in the T.P.Act of 1882 contained shall apply " is wide enough, yet the second clause " but every such grant shall take effect as if the said Act had not been passed ". The second clause clearly shows why the first clause was inserted. Read together, they mean that nothing in the T.P.Act applies to Crown Grants so as to affect their validity. So, I think that there is no bar to rely on the T.P.Act to validate grant.

17. I turn to the case-law. In " Gaya Prasad Vs.

Secretary of State " Section 3 of the Crown Grants Act was referred to avoid the provisions of the Contract Act over-riding terms of the Crown Grant. That is not the case here. In " The Secretary of State Vs. Nistarini ", Sec -tion 107 of the T.P.Act was relied on to avoid the lease granted by Government on the ground that it was not -- registered. So it was remarked that this provision in the Act cannot invalidate the grant in view of Section 2 of the Crown Grants Act. So neither case deals with the -- question whether the T.P.Act cannot be used to validate the grant though it cannot be used to invalidate a grant or term of it. So, in my ~~view~~ opinion, the provision in Section 43 of the T.P.Act, can be used to show that the grant is valid.

18. Even supposing that in view of the general -- wording of Section 2 of the Crown Grants Act, it is held that the T.P.Act is not to be used in any case whether to validate or ~~or~~ to invalidate the grant, yet as I have -- pointed out, the vesting in Government of abandoned village sites is not dependent on a finding of the Collector after due enquiry under Section 37 (2). So the question of feeding the estoppel need not be invoked on the point of title.

19. But a further question arises if the bar of -- estoppel arises against Government. In I.L.R. 29 Bombay -- Page 580 " Municipal Corporation of Bombay Vs. Secretary of State " it has been held that the equities of estoppel apply to Government also. But in this case there is a further -- obstacle in plaintiff's way. There can be no estoppel -- against a statutory provision. Orders or acts of the Collector under Section 37 are subject to revisional powers of the Commissioner who is authorised to set aside the Collector's orders. This statutory provision or authority of the -- Commissioner cannot be barred by estoppel. As discussed in the case in I.L.R. Bombay " Municipal Corporation of Bombay Vs. Secetary of State ". there are two ways in giving equitable

relief in such cases. Either the possession of the person whose possession is sought to be disturbed, is protected in equity or he is allowed compensation. In the present case, the statutory provision under Section 211 cannot be neglected and I think that the proper way is to compen-sate plaintiff, which principle has been accepted for Government also. In equity, I do think that plff who has put in labour and money in bringing under cultivation 6 acres, is entitled to compensation at least though he may not be entitled to hold possession in view of the orders of the Commissioner. Though no specific prayer for compensation is made, it is an equitable relief flow-ing out the plea of estoppel and Government has consent-ed to pay. Consequently, I allow that relief though not specifically prayed for.

20. The next question is if plaintiff has -- improved the land at considerable expenses. In the -- plaint, he says that he spent Rs. 2500/-. It cannot be denied that he brought 6 acres of fallow Gavatha land under cultivation (Vide R of R Extracts Exs. 5 and 6). To bring fallow land under cultivation, it cannot be -- denied that plaintiff must have put in labour and money. The question is what money he must have spent and to what compensation he is entitled. It appears that the Collecto assessed at one stage, the loss at Rs. 250/- (Vide Ex 41 The learned pleader for Government stated in arguments that Government is willing to pay Rs. 250/- as compensa-tion. It is pointed out for Government that plaintiff has led no evidence about the expenses incurred by him except his own vague oath. He seems to have cut some trees or tree stumps and levelled the ground. He alleges that there were some ditches also. But the exact extent them is not in evidence and there is no criterion to determine the expenses incurred. It is pointed out in his cross-examination that there were some trees removed by

him and he may have got some money thereby to meet expenses of levelling etc. That is probable also. Considering -- all these circumstances, there is no evidence to hold that he has spent Rs. 2000/- or more. In these circumstances, I allow Rs. 250/- only on admission of Deft No. 1.

21. So, on the whole, I allow Plaintiff compensa -tion of Rs. 250/-. He shall pay Court fee on the same before executing this decree. Though plaintiff has failed on the substantive prayer, equities are in his ~~prayer~~ favour. I have allowed him compensation. In these circumstances, I order parties to bear their own costs.

O r d e r

Defendant do pay Plaintiff Rs. 250/-. Plaintiff shall pay additional Court fees to make up Court -fee on Rs. 250/-before executing the decree. Parties to bear their own costs.

23rd January 1952. Sd. V.B. Potdar.-
Civil Judge, Senior Division,
Dharwar.

Typed by

Compared by

True Copy

Clerk of the Court.

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ఖైరతాబాద్ ఫ్యాక్టరీ లిమిటెడ్ కంపెనీకి

యిచ్చిన ఖైరతాబాద్ ఫ్యాక్టరీ

లాభనష్టాల ఖాతా మరియు నికర ఆస్తుల పట్టీ

సంవత్సరం ముగిసిన తేదీ 31 మార్చి 1951

ఈ ఖాతాలు మరియు పట్టీ ఈ కంపెనీ యొక్క ఆడిటర్లు తనిఖీ చేసి ధృవీకరించారు.

ఆడిటర్ల నివేదిక ప్రకారం ఈ ఖాతాలు మరియు పట్టీ

ఈ కంపెనీ యొక్క వ్యవహారాల స్థితిని మరియు లాభనష్టాలను

సరిగ్గా చూపుతున్నాయి.

ఈ కంపెనీ రిజిస్టర్డ్ ఆఫీసు బొంబాయి (State of Bombay) లో ఉంది.

ఈ కంపెనీ యొక్క ఆడిటర్లు [redacted] గారు.

ఈ కంపెనీ యొక్క డైరెక్టర్లు [redacted] గారు.

ఈ కంపెనీ యొక్క సెక్రటరీ [redacted] గారు.

1) ఖాతాల ప్రకారం లాభం — రూ. [redacted]

దీనికి ఆదాయపు పన్ను మరియు ఇతర పన్నుల నిమిత్తం

2) ఈ సంవత్సరం లాభంతో పాటు పాత నిల్వ [redacted] కలిపి

మొత్తం [redacted] రూ.

ఇందులో నుండి ఈ క్రింది విధంగా కేటాయింపులు చేయబడ్డాయి.

ఆదాయపు పన్ను నిమిత్తం [redacted] రూ.

సూపర్ టాక్స్ నిమిత్తం [redacted] రూ.

డివిడెండ్ [redacted] రూ.

మొత్తం [redacted] రూ.

మిగిలిన [redacted] రూ. నిల్వ ఖాతాకు బదిలీ చేయబడింది.

ఒకరు చనిపోయి ఉత్తరాధికారులు లేకుండా వున్నప్పుడు వారి ఆస్తులు
సంక్రమించుటకు చట్టపరమైన చర్యలు ఏమిటి వివరించండి.

ఆస్తులు ఉత్తరాధికారులు లేకుండా చనిపోయినప్పుడు ఆస్తులు ప్రభుత్వానికి
చెందుతాయి. ఆస్తులు ప్రభుత్వానికి చెందినట్లయితే ఎవరైనా వారసులమని
చెప్పుకొనుటకు ఏమైనా అవకాశం ఉన్నదా? ఉన్నట్లయితే ఆ వివరాలు
తెలుపండి.

4) మండల రెవెన్యూ అధికారులు ఏ చట్టం ప్రకారం విధులు నిర్వహిస్తారు?
Land Revenue code ప్రకారం విధులు నిర్వహిస్తారు. ఈ చట్టం
ప్రకారం ఏ ఏ విధులు నిర్వహిస్తారో వివరించండి.

5) మండల రెవెన్యూ అధికారులు ఏ ఏ సందర్భాలలో ఎంక్వయిరీ చేస్తారు?
ఎంక్వయిరీ చేసేటప్పుడు ఏ ఏ అంశాలను పరిగణలోకి తీసుకుంటారు?
ఎంక్వయిరీ చేసిన తరువాత ఏ ఏ నివేదికలు ఇస్తారో వివరించండి.

6) మండల రెవెన్యూ అధికారులు ఏ ఏ సందర్భాలలో ఎంక్వయిరీ చేస్తారు?
ఎంక్వయిరీ చేసేటప్పుడు ఏ ఏ అంశాలను పరిగణలోకి తీసుకుంటారు?
ఎంక్వయిరీ చేసిన తరువాత ఏ ఏ నివేదికలు ఇస్తారో వివరించండి.

7) మండల రెవెన్యూ అధికారులు ఏ ఏ సందర్భాలలో ఎంక్వయిరీ చేస్తారు?
ఎంక్వయిరీ చేసేటప్పుడు ఏ ఏ అంశాలను పరిగణలోకి తీసుకుంటారు?
ఎంక్వయిరీ చేసిన తరువాత ఏ ఏ నివేదికలు ఇస్తారో వివరించండి.

తరతరములనుండి నిర్వహింపబడుచున్న సదావర్తనమునకు
లోబడి చేయవలసినది ఏమనగా నిత్యము V లాంఛనముతో కూడిన
కొబ్బరి నూనెతో చేసిన నివేదనము దేవతకు అర్పించిన తరువాత
అర్చకులు ఎవరికివారు దానిని భుజింపవలెను (Eat it).
దేవతకు ప్రసాదముగా ఇవ్వబడిన నివేదనమును ఇతరులకు
పంచిపెట్టుట అనునది నివేదనమును అర్పించిన తరువాత
మాత్రమే జరుగవలెను. ఇట్లు చేయుటవలన దేవతకు
ఇవ్వబడిన నివేదనము ఇతరులకు పంచిపెట్టుట అనునది
ఎంతమాత్రమును కలుషితమవ్వకుండునట్లు నిర్ధారించుటకు
చేయవలసిన ఏర్పాట్లు చేయుటకు ఆలయ అధికారులు
బాధ్యులై ఉన్నారు. ఇట్లు చేయుటను Feeding the deity
అని అంటారు. ఇట్లు చేయుటవలన దేవతకు ఇవ్వబడిన
నివేదనము కలుషితమవ్వకుండా ఉండుటకు అవకాశము
ఏర్పడుతుంది. ఇట్లు చేయుటవలన ఆలయ అధికారులు
ఎటువంటి ఇబ్బందులకు గురికాకుండా ఉండుటకు అవకాశము
ఏర్పడుతుంది. ఇట్లు చేయుటవలన దేవతకు ఇవ్వబడిన
నివేదనము కలుషితమవ్వకుండా ఉండుటకు అవకాశము
ఏర్పడుతుంది. ఇట్లు చేయుటవలన దేవతకు ఇవ్వబడిన
నివేదనము కలుషితమవ్వకుండా ఉండుటకు అవకాశము
ఏర్పడుతుంది. ఇట్లు చేయుటవలన దేవతకు ఇవ్వబడిన

ఆ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఇ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఈ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఉ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఊ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఋ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఎ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఏ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఐ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఒ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఓ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ఔ) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ం) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

ః) ఈ ఉత్తర్వులు ఎవరి పేరున జారీ చేయబడినవో వారు ఆ ఉత్తర్వులను ఎవరి ద్వారా అయినా ఎప్పుడైనా రద్దు చేయించుకోవచ్చు.

51 94

Suits:

Dharwar.

For a declaration that certain orders passed by the Commissioner, Southern Division and by Government of Bombay relating to the deserted Gavthan site of the village of Paravapur were illegal, void and ultra vires.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 6047
Bombay Castle, 21st April 1952.

Read Government Resolution No. 9128 dated the 9th June 1951.

Letter from the District Government Pleader, Dharwar No. 70, dated the 5th February 1952, forwarding copy of judgment and stating that the suit noted in the margin was decided by the Civil Judge, Senior Division, Dharwar, on 23rd January 1952, when the following order was passed :-

In the Court of the Civil Judge (Senior Division), Dharwar Civil Suit No. 498 of 1950. Sangappa Neelappa Nimbannavar .. Plaintiff; Vs. The State of Bombay .. Defendant.	No. 70, dated the 5th February 1952, forwarding copy of judgment and stating that

" Defendant do pay plaintiff Rs. 250/-. Plaintiff shall pay additional Court-fees to make up Court fees on Rs. 250/- before executing the decree. Parties to bear their own costs. "

RESOLUTION :- The result of the suit is recorded.

By order of the Governor of Bombay,

original E.P. Bhamgara

E.P. Bhamgara.
Assistant Secretary to Government.

To

The Revenue Department,

The Collector of Dharwar,

The District Government Pleader, Dharwar.

S. 15/4.

Sd/- 18/4 A.S.

S Dhawan 8/57

No. 453 dated 10 June '52. 53-79
Office of the Dist Govt Pleader,
Dharwar.

To

The Remembrancer of Legal Affairs,
Bombay.

Sub :- Civil Appeal No.66 of 1952 in L.C.Suit No.498 of 1950 - Dharwar.

G.R.L.D.No.9128 dated 9th June '51.
Collector's No. W-520 dated 21-12-1951.

Sir,

I have the honour to inform you that I have been served with Notice in Civil Appeal No.66/1952 preferred by the plaintiff against the decision in L.C.Suit No.498/1950 - Dharwar.

You are now requested to accord sanction to the defence of the above appeal on the line of the brief accompanying G.R.L.D. above quoted and on favourable grounds in the judgment of the lower Court.

A copy of the Notice served on me, copy of the appeal memo and a copy of the judgment of the lower Court are sent herewith for your perusal which may please be returned when done with.

11 JUN 1952

Yours faithfully,
R M Patel.
Dist. Govt. Pleader.

Forwarded w.c. through the Collector of Dharwar, Dharwar.

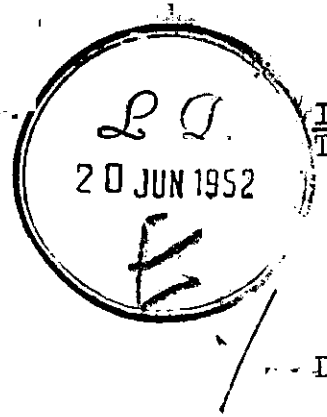
8/57

55 - 95

Subject:-Civil Appeal No.66/52:
Sanction to defence of..

**

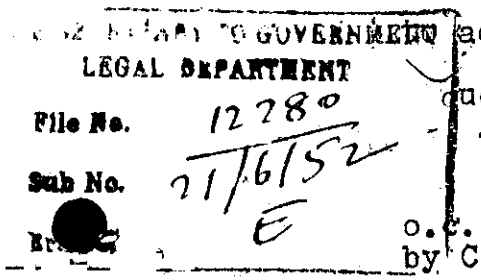
No.LAW-520
Office of the Collector,
Dharwar, 18 /6/1952.



Letter.
To.

The Remembrancer of Legal Affairs,
Bombay.

I enclose herewith the papers received from the District Government Pleader, Dharwar, with his letter No.453 dated 10-6-1952 and request you to move Government to accord sanction to the defence of the Civil appeal in question as early as possible.



o.c.signed)
by Collr.)
n

for Collector of Dharwar.

L A

Please see overleaf letter from the Collector of Dharwar.

The unsuccessful petitioner in C.P. No. 498/50 has now filed an appeal hence the Coll. requests for sanction of Govt. to defence.

Sanction may be accorded as requested by the Coll.

AE

Sd/-

for CMS Secretariat

BRK
27.6

ಹೈ ಕೋರ್ಟಿನಲ್ಲಿ ಪಿಟಿಷನ್ ವಕೀಲ

C.A. 66/52 Civ. A 145 ಸಿ.

57 11

2519-20,000-7-51-PRI.
G. R., J. D., No. 8935, dated 21-10-19 and 3883, dated 22-12-21,
from the Regr. H. C., A. S., Bombay, C. P. C. Schedule1, Appendix G, No. 6.]

ಸುಪ್ರೀಂ ಸಿವಿಲ್ ಕೋರ್ಟಿನ ಸಿವಿಲ್ ಕೇಸಿನ ಮೂಲ ಕಛೇರಿ-ವಿಷಯದಲ್ಲಿ ನೋಟೀಸು (ಆ. ಳಿ, ಕಾ. ೧೪).

ಧಾರವಾಡ ಇಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ್ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಧಾರವಾಡ ವಿ.

ದಿವಾಣಿ ಮುಕದಮೆ ನಂಬರು ೧೯೫೦ನೇ ಪೈಕಿ

(ಫಾರ್ಮ ನಂಬರು ೬. ಪರಿಷ್ಕೃತ, ೨೫೫೫.೧೦.)

ಲಗಮ ವಿಂಗಡಿ ನೀಲವ್ವ ವಿರುಬಣ್ಣಿ ಚಾರ ಮತ್ತಿ ೩ ಮಂದಿ ವಿಂಗಡಿ ಪ್ರಾರಬ್ಧಿ ವಿಳುದ್ಧ

} ಅಪೀಲೆಂಟ;

ಡಿ ಪೈಲ್ಕ ಉಪ್ಪಿ ಬಸಪ್ಪ

} ರಸ್ಪೋಂಡೆಂಟ.

ಮುಖಾಂತರ— ವಕೀಲ ಧಾರವಾಡ ಇವರ ಮುಖಾಂತರ ಹಾಲಿಬಾಡವಕೀಲ, ಧಾರವಾಡ ತಾರೀಖಿನ ೧೯೫೦ನೇ ಸನ ಗಣಿ ನೇ ತಿಂಗಳಿನ ೧ ಮೇಲೆ ಅಪೀಲು ಮಾಡಿದ್ದರು

ಬೇಲೀಫನ ಹಸ್ತರ— ೩ ರಿಸ್ಪೋಂಡೆಂಟನಾದ ಡಿ ಪೈಲ್ಕ ಉಪ್ಪಿ ಬಸಪ್ಪ

ತಾರೀಖು— ನಿನಗೆ ನೋಟೀಸು ಕೊಡುವದೇನಂದರೆ, ಈ ವ್ಯಾಜ್ಯದಲ್ಲಿ ವಕೀಲ ಧಾರವಾಡ ಇವರು ಹಾಲಿಬಾಡವಕೀಲ ಧಾರವಾಡ ಇವನಿಗೆ ಕೋರ್ಟಿನಿಂದ

ಮಾಡಲ್ಪಟ್ಟ ಹುಕುಮನಾಮೆಯ ಮೇಲೆ ಅಕೆಲಾರ್ ಇವನಿಂದ
ಅಪೀಲ ಮಾಡಲ್ಪಟ್ಟಿದ್ದು ಅದು ಈ ಕೋರ್ಟಿನಲ್ಲಿ ರಜಿಸ್ಟರು ಮಾಡಲ್ಪಟ್ಟಿದೆ, ಮತ್ತು ಈ ಅಪೀಲಿನ ಸುನಾವಣೆಯ
ಬಗ್ಗೆ ಸನ್ ೧೯೫೨ ನೇ ಇಸವಿಯ ತಿಂಗಳಿನ ತಾರೀಖು ಈ ಕೋರ್ಟಿನಿಂದ
ನೇಮಿಸಲ್ಪಟ್ಟಿದೆ.

ನೀನು ಸ್ವತಃ ಯಾ ನಿನ್ನ ವಕೀಲನು ಯಾ ಅಪೀಲಿನಲ್ಲಿ ನಿನ್ನ ಸಲುವಾಗಿ ಕೆಲಸ ನಡಿಸಲಿಕ್ಕೆ ಕಾಯದೆ
ಯಿಂದ ಅಧಿಕಾರ ಪಡೆದಂಥ ಬೇರೊಬ್ಬ ಮನುಷ್ಯನು ನಿನ್ನ ಬಗ್ಗೆ ಹಾಜರಾಗದಿದ್ದರೆ, ನಿನ್ನ ಪರೋಕ್ಷದಲ್ಲಿ
ಅಪೀಲಿನ ಸುನಾವಣೆಯಾಗಿ ನಿರ್ಣಯವಾಗುವದು.

ಸಮಕ್ಷಪ್ರತಿಜ್ಞೆಯ ಮೇಲೆ

ತಾರೀಖು—

ಈ ಹೊತ್ತು ಸನ್ ೧೯೫೨ ನೇ ಇಸವಿಯ ತಿಂಗಳ ನೇ
ತಾರೀಖಿನ ದಿವಸ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟ್ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ನಾಝುರ.

PP 159/78-A

Rec'd
Rambatt.
D.L.P.
2-5-52

ಟೀಪು—ಅಮಲ್ ಬಜಾವಣೆಯನ್ನು ನಡಿಸಲಿಕ್ಕೆ ಹುಕುಮ್ ಮಾಡಲ್ಪಟ್ಟಕೆ, ಅದನ್ನು ಈ ನೋಟೀಸಿನಲ್ಲಿ
ಕಲಿಸಬೇಕು.

Presented on 11-2-1952.

Civil Appeal No.66 of 1952.

Exh. No.1.

In the Court of the District Judge,
Dharwar.

Appellant :- Sangappa Nilappa Nimbannavar,
age 52, Agriculture, of Sangadevarkop,
Taluka Kalghatgi.

Versus.

Respondent :- The State of Bombay.

Claim Rs. 5/-

Being aggrieved by the judgment and decree dated 23-1-1952, passed by the Civil Judge, S.D., Dharwar, in L.C.Suit No.498/50 dismissing the plaintiff ~~xxxxxxxxx~~ claim for perpetual injunction, ~~xxx~~ the plaintiff-apellant begs to prefer an appeal against the same for the following among other grounds to be urged at the time of hearing.

G r o u n d s.

1. The judgment and decree of the lower Court are contrary to law and evidence on record.

2. The provisions of the scope of sections 37 and 211 of the Bombay Land Revenue Code have not been construed properly and appreciated by the learn d Civil Judge.

3. The proposition of law so clearly laid down

by our own High Court in 44 Bom.L.R.405, the Government of Bombay v. Mathurdas Laljibhai and in 46 Bombay L.R. 410 - Government of Bombay v. Ahmedabad Mills have not been properly appreciated by the lower Court.

4. The operation of the relevant part of section 211 of the Bombay Land Revenue Code confined to cases where a metter rests merely at the stage of a decision or order or proceedings of a subordinate authority but not where the same has not been superadded or the same has resulted in an agreement or a contract or document embodying terms and conditions agreed to between the Government and the occupant.

5. The lower Court errs in holding that all acts of the Collector under section 37 of the Bombay Land Revenue Code are necessarily acts as a subordinate to the commissioner. This has led to the entire miscarriage of justice.

6. The difference in the legal incidents or effect under law arising under the mere orders of disposal under section 37 of the said Act by the Collector and those arising under the contracts entered into in futherence of the orders of disposal has not been noted and well appreciated by the learned Civil Judge.

7. It is grievously wrong to hold that the contract entered into by the Collector in futherence of the order of disposal of property even undersection 37 as entered into him by him not directly as an agent for the "Secretary of State" but merely asa subordinate authority of the Commissioner.

8. The suit Kabulayat dated 24-8-1946 i.e. the agreement in the prescribed Form F (1) was entered into by the Mamlatdar Kalgnadgi as representative of the Government itself- binding thereby the state -but not as-

61 49

a subordinate authority of the Commissioner. The lower Court erred in holding that such a grant is by the Collector as a subordinate officer of the Commissioner.

9. Even though it may be ultra vires or within the jurisdiction of the Commissioner in setting aside the order of disposal by the Collector, it was beyond his jurisdiction and ultra vires of his powers to set aside the suit contract or the Kabulayat dated 24-3-1945 The lower Court ought, therefore, to have held that the Commissioner's orders dated 3-2-1948 are ultra vires and hence null and void.

10. The lower Court was wrong in holding that the suit contract or the Kabulayat shall have to be taken as set aside by the Commissioner though it is not so said by him in any of his orders.

11. There cannot be any estoppel against the statute. The conduct of the plaintiff in his agreeing to vacate certain area of the suit property to Government and in his willingness to hold the suit property as per the orders of the Revenue authorities disclaims, made in his desperate attempts to save the grant as it does under statute or does not create any estate in the respondent which they could not under law.

12. It is wrong to hold that the plaintiff appellant by his conduct showed that the contract dated 24-3-1945 was considered as no more in existence. Its existence, its validity depends not on the conduct of the plaintiff of the defendants but depends entirely under the statutory provisions.

13. To hold the suit contract or the Kabulayat dated 24-3-1945 as well as the earlier orders of 16-12-1944 and 2-3-1945 were all set aside by the Commissioner as illegal and is a travesty of justice. The learned Civil Judge ought to have held that such an order or orders of the Commissioner being ultra vires of his powers was or were initially null and void.

14. The lower Court was right in holding that even in absence of the formal inquiry under sec. 87(2)

of the land revenue code, the deserted or abandoned village site vests in the Government and that thus the Collector's order for taking possession of the suit property without the said inquiry and for disposal of the same is not illegal. It, however, errs in holding that there is nothing to show that the Commissioner's order under section 211 to ser aside such an order including the agreement based on it are ultra vires or illegal.

15. The learned Civil Judge ought to have held that the orders ofthe Commissioner dated 8-2-1948 and 27-12-1948 in setting at naught the suit contract or kabulayat and the order of the Government date 19-10-1949 in confirming the dsm , are ultra vires, illegal and null and void ab intio. He errs in holding tha the same are binding opon the plaintiff appellant.

16. The lowert further errs in holding that Article 14 of the Indian Limitation act applies to the facts of the present case. This is vrong, the same having been based upon an erroneous finding that tne orders of the Commissioner and Government are not ultra vires or illegal.

17. The learned Civil Judge erres in holding that the frame of the suit is not legal and that prayer for injunction is not tenable.

18. The lower Court is right in holding that the suit is well in time.

19. The lower Court is also right in holding that the plaintiff is not estopped from challanging the orders of the Commissioner and other revenue authroties and the legality of the sa, e.

63 13

20. It is also right in holding that sections 2 and 3 of the Crown Grnats Act No.XV of 1895 are no bar to the plaintiff to rely on the provisions of the Transfer of Propety Act and that section 43 of the Transfer of Property Act can be availed of by the plaintiff.

21. The lower Court ought to have held that the res ondent was estopped from challanging the plaintiff appellant's title to the suit property according to the principle of ' feeding the estoppel ' as provided in section 43 of the T.P.Act. In view of the fact that even after an anquiry was held to have been vested in the Government.

22. Proper presumptions are not made and inferences drawn are not proper.

23. The reasong of the lower Court are erroneous as the scope of sections 37 and 211 of the Bombay Land Revenue Code has not been properly understood by the lower Court.

24. Evidence has not been properly ~~understood~~ appreciated. The lower Court ought to have held that the plaintiff had spent no less ~~than~~ a sum ~~of~~ of Rs.2000/- to 2500/- in effecting improvements and in bringing six ~~acres~~ acres of the suit property which was all waste land before he purchased the same. The compensation money as assessment is gros ly inadequate. It fails to meet the ends of justice and equity.

25. The lower Court ought to have held that the orders of the Commissioner and of the Government in setting aside the suit kabulayat were ultra vires and

and null and void and the plaintiff was the absolute owner of the suit property. The plaintiff appellant's claim for perpatual injunction retaining the defendant respond nt from dispossessing ~~kxx~~ him etc ought to have been granted in toto.

For these reasons, it is prayed that the judgment and decree of the lower Court be set aside with costs through and the plaintiff's claim be decr d in its en entirty.

Dharwar
11th Feb '52.

Drafted and Presented
by

Sd/- I.G.Hiregoudar,
Pleader.

Admit - Notice
13-2-1952.
Sd/- D.K.P.

No. 10889

Office of the
Remembrancer of Legal Affairs,
Bombay Castle(Bombay No.1), 1st July 1952.

To

The Collector of Dharwar,
Dharwar.

Subject:- Civil appeal No.66/52 in
O.S.No.498/50.

Sir,

With reference to your letter No.LA' 520 dated the 18th June 1952 on the above subject, I have the honour to state that sanction is hereby accorded to the defence of the above appeal.

Yours faithfully,

for Remembrancer of Legal Affairs.

KML/30.6

Copy to the District Government Pleader, Dharwar for information and necessary action.

67/12-5

Suits:

Dharwar.

For a declaration that certain orders passed by the Commissioner, Southern Division and by Government of Bombay relating to the deserted Gavthan site of the village of Paravapur were illegal, void and ultra vires.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 12719
Bombay Castle 31st July 1952.

Read Government Resolution, Legal Department No.6047 dated the 21st April 1952.

Letter from the District Government Pleader, Dharwar

In the Court of the Civil Judge (Senior Division), Dharwar Civil Suit No.498 of 1950. Sangappa Neelappa Nimbannavar ... Plaintiff Vs. The State of Bombay. ... Defendant.	No.453 dated 10th June 1952 requesting

Government's sanction to the defence of the First Appeal No.66 of 1952 filed by the plaintiff in the suit noted in the margin.

Letter from the Collector of Dharwar No.LAW 520 dated 18th June 1952 forwarding the above.

RESOLUTION: Sanction is accorded to the defence of First Appeal No.66 of 1952 in the Court of the District Judge Dharwar on the lines of the brief accompanying Government Resolution, Legal Department No.9128 dated 9th June 1951 and the favourable grounds contained in the judgment of the Civil Judge, (Senior Division) Dharwar dated 23rd January 1952.

By order of the Governor of Bombay.

original R.T. Katarki

R.T. Katarki,
Deputy Secretary to Government.

Issued CSP 31/7

To

The Revenue Department,
The Collector of Dharwar,
The District Government Pleader, Dharwar.

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No. 9449 Dated 30 Nov. 1953.
Office of the District Govt.Pleader,
Dharwar.

To,

The Remembrancer of Legal Affairs, Bombay,
Bombay.

L.D.
2 - DEC 1953

Subject :- C.A.No.66/1952 in L.C.No.498/1950 of the Court of Civil Judge, Senior Division, Dharwar.

Reference : G.R.L.D.No. 12719 dated 31st July 1952.

Sir,

I have the honour to inform you that the above appeal was heard by the Assistant Judge and the following order was pass-ed on 30-10-1953.

" The appeal is allowed with costs throughout. The decree of the lower Court is set aside and it is declared that the Plaintiff is entitled to hold the suit property in accordance with Exh.30, and the Defendant will be restrained from interfering with the Plaintiff's possession and wahivat contrary to the terms of Exh.30."

Yours faithfully,
R. N. Patil.
District Govt. Pleader.

THE SECRETARY TO GOVT.
LEGAL DEPARTMENT
No. 29364
Dt. 3/12/53

Copy forwarded with compliments to the Collector of Dharwar with an uncertified copy of judgment for information.

Subsidio

Ai sensi dell'art
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ai C.A. n° 66/52
deciso oggi dal
Giunta del 30-10-53

si fissa il prezzo

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Received on
Registered on
Decided on
Duration

IN THE COURT OF THE ASSISTANT JUDGE, DHARWAR.
AT DHARWAR.

Civil Appeal No.66 of 1952 from the judgment and decree in Long Cause Civil Suit No.498 of 1950, of the Court of the Civil Judge, Senior Division, at Dharwar..... (Shri.V.B.Potdar).

Pleaders :-

Shri.I.G.Hiregoudar.

Sangappa Nilappa Nimbannavar, age 52, occupation agriculturist, of Sangadevarkop, Taluka Kalghatgi..... ..... Appellant/plaintiff.

Versus.

Shri.R.M.Patil, Dist. Govt. Pleader.

The State of Bombay,... Respondent/defendant.

Claim Rs.

Judgment.

This is an appeal by the plaintiff from the judgment and decree of the learned Civil Judge, S.D., Dharwar, in L.C.Suit No.498 of 1950 substantially dismissing the suit.

2. The facts which are not in dispute are as follows :-

The property in suit measuring 10 acres of land x is a part of the Gavthana area of an abandoned village named Parawapur in Kalghatgi

taluka. On 16-12-1944 the Collector of Dharwar ordered the possession of the same to be taken on behalf of Government as Government waste land and directed its disposal. On 8.8.1945 the plaintiff purchased these 10 acres for Rs.552/- in the public auction. On 24-8-1945 an agreement in Form F(I) was taken from the plaintiff, as directed by rule 37 of the Land Revenue Rules. In the mean time the plaintiff being put in possession he brought under cultivation about 6 acres of land at some expense. The plaintiff puts the expense at about 2,000/- to 2,500/- rupees while the defendan puts at about Rs.250/-. When the plaintiff was thus in undisturbed possession for about 3 years an order was passed by the Commissioner Southern Division purporting to act under section 211 Land Revenue Code cancelling the Collector's orde dated 16-12-1944 and the order of the Prant Officer fated 8-8-1945 selling the site to the plaintiff. That order which is dated 8/17-2-1948 proceeded on the footing that the Collector had not made the necessary enquiry under sub-section (2) of section 37 of the Land Revenue Code, and therefore, the village site could not vest in the Government until the inquiry was made and the claim of the Government established. He directed by this order that an enquiry under section 37(2) of the Land Revenue Code should be made and the result reported to him. Thereafter an enquiry was made by the Prant Officer who on 21-10-1948 came to the conclusion that the property was Government property. On the required report being made, the Commissioner passed the further order on 27-12-1948. He pointed out that there was no question of restoring the land to the plaintiff as the former order of the Collector had been already cancelled. So he directed that steps should be taken to get the village resettled by laying put suitable independent plots, and to dispose them of as the Collector deemed fit. So far as the plaintiff is concerned, he directed that he may be paid Rs.250/- as compensation if the Collector

73 17

was satisfied that the plaintiff had suffered a loss.

The plaintiff appealed to the Government, but the appeal was dismissed on 19-10-1949. In the mean time active steps were taken by the subordinate officers to take possession and to divide the site into plots as directed by the Commissioner. When it was obvious that coercive measures should be taken to oust him the plaintiff seems to have capitulated and urged that as he had raised a crop in about 6 acres he may be at least continued in possession for the year 1949-50 and the remaining 4 acres might be first divided into plots. He also agreed to give a possession after the end of the year. In the mean time he went on memorialising the higher authorities, but in vain. Finally the Mamlatdar of Kalghatgi served on him with a notice to quit within 7 days on 1-7-1950. Thereafter the plaintiff gave notice to the Government on 6-7-1950 and brought the present suit to prevent the Government from dispossessing him. He alleged that the orders passed by the Commissioner were ultra vires, illegal and not binding on him, and in view of the agreement dated 24-8-1945 he was not liable to be evicted merely on the basis of these orders. He alleged that the agreement was valid and operative and the same could not stand cancelled by any orders passed by the Commissioner.

3. A number of contentions were raised on behalf of the defendant/State but we are concerned with only a few of them which have been taken in appeal. It was contended that the Collector had no power to dispose of the property without making an inquiry under section 37(2) and, therefore, the aforesaid agreement dated 24-8-1945 was invalid ab initio. It was also contended that under section 37 of the Land Revenue Code the disposal of Government property was subject to the orders of the Commissioner and since there was no

approval of the same by the Commissioner the disposal itself was invalid. It was true that subsequently an enquiry was made under section 37(2), and it was held that the Gavathana area was waste landwhich vested in Government, but that decision could not help the plaintiff to plead the doctrine of feeding the estoppel under section 43 of the Transfer of Property Act because in the first place the agreement itself was void ab initio, and secondly the section had no application to crown grants. Lastly it was contended that the subsequent conduct of the appellant if agreeing to deliver up possession of the 10 acres created an estoppel because by his various actions he had abandoned his rights in the original agreement.

4. The learned Civil Judge held that an enquiry and a decision under section 37(2) of the Land Revenue Code was not necessary to vest any property in the Government and that the land was already vested in Government, when the Collector disposed of it of in favour of the plaintiff in the public auction. He was also of the view that the plaintiff was entitled to rely on section 43 of the Transfer of Property Act with a view to feed the estoppel. He also rejected the contention that the subsequent conduct of the plaintiff operated, in any way, an estoppel. But in his view the disposal of the property by the Collector was subject to the orders of the Commissioner, that is to say, he has disposed it of as an officer subordinate to the Commissioner, and, therefore, the Commissioner was entitled to cancel the agreement itself. He held that the Commissioner by his ~~agreement~~ order had set aside the contract itself, and therefore, the plaintiff had no right to obtain an injunction on the basis of that contract. In that view he dismissed the plaintiff's claim. Having regard, however, to the fact that the defendant had been prepared to pay a compensation of Rs.250/- to the plaintiff he directed a decree in favour of the plaintiff for the amount on payment of the necessary additional Court fees.

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5. Aggrieved by the decision the plaintiff has come in appeal.

The issues for determination are -

(1) Whether the agreement with the plaintiff was invalid either because the property was not vested in the Government or there was no approval of the Commissioner

(2) If so, whether the plaintiff can avail himself of the provisions of section 43 of the Transfer of Property Act ?

(3) Whether the plaintiff is estopped from alleging that the agreement still subsists ?

My findings are -

(1) No; (2) Does not survive; (3) No;

Reasons

6. It was alleged in the plaint that the orders of the Commissioner dated 17-2-1948 and 27-12-1948 were illegal and ultra vires and not binding on the plaintiff. But it is no longer disputed before me that the Commissioner in his revisional jurisdiction under section 211 of the Land Revenue Code had power to modify the order of the Collector passed on 16-12-1944. What is, however, contended is that he had no jurisdiction to treat the agreement entered into by the plaintiff with the Government as cancelled as he seems to have done under the second order. The first order which is at Exh.37 dated 7/17-2-1948 purports to cancel the Collector's order taking possession of the abandoned village as well as the Prant Officer's order dated 8-8-1945 disposing of the land to the plaintiff. This he has done under section 211. It is ....

It is recognised in Government of Bombay v. Ahmedabad Mills A.I.R.1944 that under section 211 of the Land Revenue Code the Commissioner can in revision call for the papers in order to satisfy himself as to the legality or propriety of any decision or order passed by and as to the regularity of the proceedings of, a subordinate revenue officer like the Collector or the Prant Officer and if satisfied that there is an illegality or an irregularity he can annul, modify or reverse the orders. In this case he has reversed the order of the Collector and the Prant Officer because xx in his opinion an inquiry under section 37(2) of the Land Revenue Code was essential before vesting the property in the Government. Whatever the reasons might be for reversing the order, it is clear that the Commissioner had the powers to reverse the order and since he has done so it cannot be said that the order itself is illegal or invalid. But so far as his second order dated 27-12-1948 (Exh.41) is concerned, it appears that the sale itself had been cancelled because the Commissioner declares that as the sale has been already cancelled there was no question of restoring the land to the plaintiff. If this order is read as one not cancelling the order but the agreement Exh.30 which was entered into by the plaintiff with the Government on 24-8-1945 it will have to be said that the order is ultra vires because as held in Government of Bombay Vs. Mathurdas .I.R. 1942 Bombay 256 and in the above mentioned case there is nothing in section 211 of the Land Revenue Code to suggest that the Government or the Commissioner can cancel an agreement made by the Collector. The Commissioner can set aside the order of his subordinate but that would not affect the agreement founded upon that order. It is, therefore, clear that the agreement at Exh.30 cannot be regarded as set aside by whatever was done by the Commissioner or the Government in this case. This agreement is in Form (....

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Form F(1) drawn up in accordance with rule 37 of the Land Revenue Rules. The agreement is accepted on behalf of the Government because it is executed by the plaintiff in the presence of the Amlatdar. There has been a mutation in the record of rights accordingly, and the plaintiff has been put in in possession of the land. It is, hence, clear that even if it was competant for the Commissioner to cancel the orders of the Collector and the Prant Officer this agreement Exh.30 stands.

7. As there was no escape from the above position in law, the learned Government Pleader argued that the agreement itself was void for two reasons. In the first place, he contended that the Collector had disposed of the property before making an enquiry under section 37(2) of the Land Revenue Code, which according to him was a condition precedent to the vesting of the property in the Government. In the second place, it was contended that the order of disposal of property vested in Government under section 37 was always subject to the orders of the Commissioner which he interpreted as the sanction or approval of the Commissioner in each individual case. As there was no such sanction and the Collector in this instance merely entered into an agreement as a subordinate of the Commissioner the agreement was void.

8. So far as the first point is concerned I agree with the view of the learned Civil Judge that an enquiry under section 37(2) of the Land Revenue Code is not essential for the vesting of any property in Government. Section 37(1) itself declares what are the properties which are

vested in the Government. There is nothing in sub-section(2) to indicate that the vesting of any property in the Government is postponed till the Collector or a survey officer makes a formal inquiry. Sub-section(2) comes into play only when any property or any right in or over any property is claimed by or on behalf of Government or by any person as against Government. It is, therefore, evidence that where there is no such claim there is no need for an enquiry. If the contention is accepted it will only mean that no property under section 37(1) will vest in Government unless an inquiry is made whether there is any claim or not. I do not think that is the intention of the whole section. Section 37(1) itself declares what are the properties vested in Government. and there is no need for an enquiry before this vesting takes place. In my opinion, the Collector was perfectly competant to dispose of the property in this case which was vested in the Government as waste land. As a matter of fact, it has been subsequently found on enquiry that it was Government property. I think it will be wrong to assume that it becomes Government property only after the findings and not before. This ground, therefore, cannot help the defendant to claim that the agreement was incompetant or void.

9. The second ground falls into two parts. It is contended that the disposal of this property is subject, under section 37, to the orders of the Commissioner. The relevant part of section37(1) is - " and it shall be lawful for the Collector, subject to the orders of the Commissioner, to dispose of them in such manner as he may deem fit, or as may be authorised by general rules sanctioned by Government." It is not disputed that general rules have been sanctioned by Government and they are to be found in chapter 7 of the Land Revenue Rules (1921). The rules are from 30 to 57. In this particular case as the land was given for agricultural purposes the grant is made under rule 37, sub-rule(2) of which provides for the grant being in the form of an agreement

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in Form F and sub rule (4) in Form F(1). It is argued that this grant us subject to the orders of the Commissioner which expression is interpreted in two ways. One is the way in which it is interpreted by the learned Civil Judge, viz., that the grant us made by the Collector as a subordinate officer of the Commissioner. The other is that the grant is mad subject to the approval of the Commissioner. It is not disputed that there is no approval or particular sanction in this case of the Commissioner.

10. In my opinion, both these interpretations are not correct. The interpretation suggested by the learned Civil Judge was put forward by the Government Pleader in a recent case of our High Court, Sambhaji V. The Mamlatdar of Baramati A.I.R.1953 Bombay 300 page (301) but was not accepted. The second interpretation would be that in every individual grant the sanction or the approval of the Commissioner would be necessary to make the grant valid. That, however, does not appear to be the intention either of the section itself or the rules that have been framed under the Land Revenue Code. Out of the various rules in Chapter 7 of the Land Revenue Rules a few require the sanction or approval of the Commissioner in particular cases, and not in others. See for example rules 32-A, 39, 43(2), 47, 47-A(3), 51(1)(3), 54-A(3)(h), 55 etc. If every grant was to be sanctioned or approved of by the Commissioner there was no need for providing that in particular cases only the Commissioner should approve of or sanction the grant. For example Rule 39 provides that previous sanction of the Commissioner is necessary where the assessment on the ,a

land exceeds Rs.100/-. Now this provision or the previous sanction of the Commissioner would be unnecessary if any every case the grant is to be approved of by the Commissioner. In my opinion, therefore, the expression " subject to the orders of the Commissioner " merely means that the grants are to be made subject to any general or special orders alredy passed by the Commissioner. That the Commissioner has the power to pass any general or special orders is clear from rule 43(2). It is not the case here that any general or special order of the Commissioner in existence at the time of the disposal of the suit property had been contravened. Even the Commissioner himself in his order dated 17-2-1948 does not say that any general or special rules made by him had been contravened at the time of making the grant. In my opinion, therefore, thecontention that the disposal was in every case subject to the approval of the Commissioner cannot be countenanced. If that was the correct interpretation of the expression, that would have been certainly taken up in the Privy Council case of the Secretary of State Vs. Anant 36 Bo bay Law Reporter 242. The question there was - Whether the order of the Collector disposing the property in favour of the respondentwas a valid grant ?- It was held that it was invalid, because the assessment of the lan in the grant exceeds Rs.100/- and there was no previous sanction of the Commissioner as required by rule 19, corresponding to rule 39 of the present Land Revenue Rules. It would not have been necessary to refer to rule 39 to invalidate the grant if any in every case, what ever the assessme t of the land, the Collector was required to get the approval of the Commissioner. I have referred to this Privy Council case because the grant was of land vested in Government under section 37 of the Bombay Land Revenue Code. In Sambhaji Vs. The Mamlatdar of Baramati also the grant was under rule 37 and in Form F(1), but it was not contended that the grant was invalid because the Commissioner had not approved of it. I am, therefore, of the view that where the Collector, under

81 130

the rules, is empowered to dispose of property it is not necessary that the grant should be approved of or sanctioned in each individual case by the Commissioner. Both the reasons given by the learned Government Pleader for invalidating the grant having failed, it must be concluded that the agreement is subsisting and operative, and, therefore, binding both on the plaintiff and the defendant.

12 In view of the above finding on issue No.1 issue No.2 does not survive. The contention was put forward on behalf of the plaintiff hat even if the orbginal grant by the Collector was invalid because that had been no enquiry under section 37(2) the Government would be compelled to feed the grant by estoppel as soon as it was ~~xxxxxxxx~~ subsequently held on enquiry that the property had vested in the Government. It was argued for the State that the Transfer of Property Act was bot applicable to Grown grants and even if it was applicable sect on 43 wpuld not apply in the case of invalid grant. ~~Xhrif~~ If it were to be held that the grant was invalid bec use there was no previous inquiry under section 37(2). I do not think section 43 of the Transfer of Property Act would apply, even apart from the application of t e previsions of the Grown Grants Act if 1895. Section 43 of the Transfer of Property Act, which embodies the rule of feeding the grant by estoppel, applies to those cases where the transfer is valid and not invalid as being forbidden by law or contrary to public policy. But it seems to me it is not necessary to persue the point in greater detail as I have already held that the grant is valid, and there is no need to invoke section 43 of the Transfer of Property Act.

13. Lastly we come to the question of estoppel. Reference has been made to Exhs.42, 44, 45, and 51 to show that after the Commissioner had finally rejected the plaintiff's contentions. The plaintiff had agreed to surrender possession after a certain time. There is no doubt, at all that the plaintiff had acquiesced in the orders and agreed to give up possession after the expiry of the period of the lease, and even consented to the division of the site into plots, and their disposal to others. In fact, he too applied for two plots. All this however, it is clear, was done under pressure with a view to gain time so that in the mean time he can make representations to the proper authorities Exh.42 is dated 8-6-1949, bu we find from Exh,43 which is a letter to the Commissioner dated 29-7-1949 that he was still moving the provincial Government for re-consideration of the whole matter. Obviously he was afraid that the subordinate Revenue Officers would dispossess him straight way, and the site into plots, and hence, he showed his willingness to surrender land after a certain time. All this was the direct result of the action taken by the Revenue Authorities and connot be pleaded by way of estoppel by them. It is not shown that the plaintiff made any representation and acting on that representation the Government acted to its detriment. Therefore, I agree with the learned Civil Judge, that there is no estoppel.

14. We find from Exh.49 the order of the Mamlatdar dated 30-6-1950 that the plaintiff was ordered to give possession before 7-7-1950. On 5-7-1950 notice was given to Government as required under section 80 of the C.P.C. and the suit has been filed after waiting for the necessary period. As the plaintiff has succeeded in showing that his agreement is subsisting and binding on both the parties he is entitled to the injunction claimed. It will be, therefore, declared that the plaintiff is entirled to to hold the suit property in accordance with Exh.30 and the defendant will be restrained from interfering

83. 141

with the plaintiff's possession and vahivat contrary to the terms of Exh.30.

Order.

The appeal is allowed with costs through out. The decree of the lower Court is set aside and it is declared that the plaintiff is entitled to hold the suit property in accordance with Exh.30, and the defendant will be restrained from interfering with the plaintiff possession and vahivat contrary to the terms of Exh.30.

Sd/- D.G.Palekar,

30th October, 1953. Assistant Judge, Dharwar.

Dharwar Dist. Court Appeal No 66-1952

85 — 47

This is yet another case under Sect 211, Land Revenue Code. In this case land measuring 10 acres and forming part of an abandoned village site was sold by the Collector to the plff in an auction sale held on 8-8-1945 for Rs 552. The plff executed a Kabulayat in Form F (I) on 24-8-1945 and he was put in possession. He brought a portion of the land under cultivation at an expense of Rs 250 . After nearly three years the Commissioner held that the Collector had acted irregularly in putting the land to auction without first holding an Inquiry under Sect 37 Land Revenue Code if the abandoned village site vested in Govt. The Commissioner set aside the grant and directed the Collector to hold such an inquiry. That Inquiry was held and the land was held to be Govt . land. The Collector then ordered that the land should be divided into plots and these plots may be sold to the villagers. He also ordered that a sum of Rs 250 may be paid to the plff for compensation for the expenses incurred by him. After filing unsuccessful appeals against the order of the Commissioner the plff filed the present suit for a declaration that the same was illegal, and that he was not liable to be evicted.

The Govt contended that under the standing orders the Collector should have first held an inquiry as to the ownership of the abandoned village site before disposing of any portion of that site. In any case the grant made by the Collector was subject to the orders of the Commissioner, as provided in Section 37(1) .The Commissioner had also the power under Sect 211 to revise the orders of the Collector. The fact that a Kabulayat was executed by the plff in the name of the Mamlatdar was immaterial as the Kabulayat itself was issued subject to the provisions of the Land Revenue Code.

The trial Court held that the Commissioner

had the power to revise the Collectors orders both under Sect 211 and in view of the provisions of Sect 37(1). The Trial Court dismissed the suit.

In the appeal filed by the plff the learned Assistant Judge agreed that the Commissioner had the power to revise the orders and grants made by the Collector. But in view of the decision in Solankars case (A.I.R. 1953 Bombay 300) that power cannot be exercised when the grant is followed by the execution of a formal Kabulayat and the contract is completed . He therefore allowed the appeal and made the declaration sought. This view is clearly wrong and the High Court has held in Letters Patent Appeal No 4-1952 that the revisional powers can be exercised even after the execution of a document like a Kabulayat as the document itself is executed subject to the provisions of the Land Revenue Code .

In view of the legal position it would be necessary to go to the High Court in second appeal in this case. The G.P.H.C. may be instructed to file an Second Appeal against the decision of the learned Assistant Judge.

SRea 25/11/54

R.L.A. 25/1

* [I think the Latest position re. section 211 should be brought to the notice of all Law Officers]

Secy. R.D. 30.1.54

as as R.D. officers 30.1

REVENUE DEPARTMENT, SECRETARIAT, BOMBAY. 29 JAN 1954

2846/15 30.1.54

30/1

U.S.I 31/1

Submitted

Shri Bhide is taking action for A. He has got-checked the required copy of Letters Patent Appeal No. 4/52

Jha 17/2

Sol (H). 17/2

Immediate

87 149

No. 1935-E
Office of the
Remembrancer of Legal Affairs,
Bombay Castle (Bombay No.1), 28th January 1954.

To

The Government Pleader,
High Court,
Bombay.

Subject:- Dharwar District Court Appeal
No.66 of 1952 in C.S.No.498/50.

Sir,

With reference to the subject noted above, I have the honour to state that Government has decided to file a second appeal in the High Court against the decision of the Assistant Judge, Dharwar dated the 30th October 1953. You are, therefore, requested to take early steps to file a second appeal in the High Court in time. A copy of the office note along with certified copies of judgment and decree of the appellate court and the typed paper book are sent herewith for your information.

Pl. issue
Notice
3-15 P.M.
25/1

Yours faithfully,

for Remembrancer of Legal Affairs.

Copy forwarded with compliments to the Collector of Dharwar.

Copy forwarded with compliments to the District Government Pleader, Dharwar.

Submitted for acceptance
27/1

SOL (M)

C.S.
28-1

MAP/-
27/1.

3/51

NO. 834

VERY URGENT:

Office of the Government Pleader, High Court, Bombay, 29th January 1954.

89 151

From

Shri K.M.Choksi, B.A.(Hons.)LL.B,
Government Pleader, High Court.

To

The Collector of Dharwar,
AT: DHARWAR.

Subject:- Filing of Second Appeal in the High Court in Civil Appeal No.66/52 in Civil Suit No.498 of 1950.
The State of Bombay -VS- S.N.Nimbarnavar. ... ...

Sir,

With reference to R.I.A.'s letter No.1935/E dated 28th January 1954 on the above subject, I have the honour to request you to send me the following documents at an early date so as to enable me to file the appeal in the High Court in time as the last date offiling the appeal is already expired on 28-1-1954. Hence the matter may be treated as very urgent.

1). The Certified copies of Judgment and Decree in C.S.No.498/50. and
2).The Uncertified copy of Judgment in C.A.No.66/52.

L.D. 1 - FEB 1954

2898 2/2/54 E

Yours faithfully,
V.S Desai.
for Government Pleader, High Court.

Copy forwarded with compliments to the ..... for information and immediate necessary action.

835 1). The District Government Pleader, Dharwar, At :DHARWAR:
836 2). The Remembrancer of Legal Affairs, Bombay.

1231

91 153

NO.
VERY URGENT.

Office of the
Government Pleader, High Court,
Bombay, 8th February 1954.

From
Shri H.M.Choksi,B.A.(Hons.)LL.B.,
Government Pleader, High Court.

To
The Collector of Dharwar,
AT : DHARWAR.

L.D.
9.- FEB 1954

Subject:- Filing of Second Appeal in the High Court in
Civil Appeal No.89/52 in C.S.No.254/47.
AND
Civil Appeal No.66/52 in C.S.No.498/50.

Sir,

In continuation of this Office letter No834 and 837 dated 29th January 1954, on the above subject, I have the honour to request you to send me the following documents at an early date.

1). The Certified copies of Judgmentsand decrees in Civil Suit Nos. 254/47 and 498/50.

The Second Appeals are already filed 4he and the same are returned for want of the Certified copies of the Judgments and decrees in Civil Suit Nos.254/47 and 498/50. Hence the matter may be treated as very urgent.

Yours faithfully,

for Government Pleader, High Court.

3876
10/2/54

P.T.O.

Copy forwarded with compliments to ..... for information and immediate necessaction

1). The District Government Pleader, Dharwar, Ati DHARWAR. No. 1232
2). The Remembrancer of Legal Affairs, Bombay. No. 1233

Collector with letter
Dy: Secy Collr
24-3

No. 2663 93 455

Office of the Government Pleader, High Court,

Bombay, 22nd March 1954.

From

Shri H. M. Choksi, B. A. (Hons.) LL. B.,

Government Pleader, High Court, BOMBAY.

To

The **Collector of Dharwar, At :DHARWAR:**

Subject :- S.A.No.304/58 in C.A.No.66/52 in C.S.No.498 of 1950. The State of Bombay -VS- Shri S.N. Nimbannavar. ... ...

SIR,

R.L.A.'s letter No.1935/E

With reference to ~~Government Resolution Legal Department~~ No. ~~*~~ dated the **28th Jan. 1954**, on the above subject, I have the honour to invite reference to Rule 134 (2) of the Law Officers' Rules and to request you to direct the District Government Pleader who may have conducted the case, referred to above in the Court below, to inform me the numbers of important exhibits which will have to be relied upon in support of the case on behalf of Government at the time of its hearing in the High Court as those exhibits which are in vernacular will have to be translated for the use of the Court and those that are in English will have to be incorporated in the paper books which will be prepared for the use of their Lordships. The appeal has been admitted on **19th March 1954.**

2. Certified copy of the notice given by the plaintiff to the Secretary of State under Section 80 C. P. Code should be sent to me at an early date.

3. I shall also thank you to send to me four copies of the plan showing the exact position of the land acquired in relation to its surrounding situation and the several instances of sale relied on in the Lower Court.

8954
24/3/54

L. D. 23 MAR 1954

Yours faithfully,

H. M. Choksi

for *Government Pleader, High Court.*

No. 2664

Bombay, 22nd March 1954.

Copy forwarded with compliments to the Remembrancer of Legal Affairs, Bombay for favour of information.

Submitted for verification

24/3

Sol (M.L) 25/3

95 157

Suits.
Dharwar.

For a declaration that certain ~~xx~~ orders passed by the Commissioner, Southern Division and by Government of Bombay relating to the deserted Gavthan site of the village of Paravapur were illegal; void and ultra vires.

GOVERNMENT OF BOMBAY,
~~Xxxxxxxxx~~
Legal Department,
Resolution No. 9761/E
Bombay Castle, 15th April 1954.

Read Government Resolution, Legal Department No.12719 dated the 31st July 1952.

Endorsement from the District Government Pleader,

In the Court of the Civil Judge (Senior Division), Dharwar.	:	Dharwar, No.
Civil Suit No. 498 of 1950.	:	949, dated
Sangappa Neelappa Nimbannavar... Plaintiff; vs.	:	the 30th
The State of Bombay... Defendant.	:	November 1953

stating that the Civil Appeal No. 66/52 in the suit noted in the margin was decided by the Assistant Judge, Dharwar on ~~xx~~ 30th October 1953 when the following order was passed:-

"The appeal is allowed with costs through out. The decree of the lower Court is set aside and it is declared that the plaintiff is entitled to hold the suit property in accordance with Exh. 30, and the defendant will be restrained from interfering with the plaintiff possession and wahivat contrary to the terms of Exh. 30."

RESOLUTION: Sanction is accorded to the institution of Second appeal in the High Court of Judicature at Bombay against the decision of the Assistant Judge, Dharwar dated the 30th October 1953.

By order and in the name of the Governor of Bombay,

R.T. KATARKI
Deputy Secretary to Government.

To
The Revenue Department,
The Collector of Dharwar,
The Government Pleader, High Court, Bombay (~~with papers~~),
The District Government Pleader, Dharwar.

hsp/13/4

Submitted for signature
13/4
S.S.
Sol (M.L) 14/4
D.S (Civil)

96

File in S. Dh' wer 8/51

16/4

17/4

S. Dharwan 8/51

17/4/54

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Legal Department File No. S.Dwr. 8/51

Sr.No.	R.I./O.No.	Subject	Pages.

Suits Dharwar.

In the Court of the Civil Judge(S.D.)
Dharwar..

C.S.No. 498 of 1950.

S. N. Nimbannavar

v/s

The State of B'bay

For a declaration that certain orders were illegal, void and ultra vires.

1-96.